



# City of NORFOLK


C: Dir., Public Works

To the Honorable Council  
City of Norfolk, Virginia

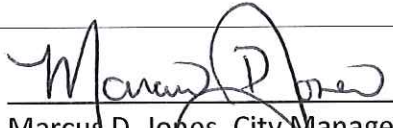
May 13, 2014

From: John M. Keifer, Director of Public Works

**Subject:** Interim Agreement with  
S.B. Ballard Construction Company  
for Preliminary Work on Construction  
of Five New Schools.

Reviewed:   
Ronald H. Williams, Jr, Assistant City  
Manager

**Ward/Superward:** Citywide

Approved:   
Marcus D. Jones, City Manager

**Item Number:**

**R-13**

I. **Recommendation:** Approve Ordinance

II. **Applicant:** City of Norfolk and S.B. Ballard Construction Company

III. **Description**

The attached ordinance authorizes the City Manager to enter into an interim agreement with S. B. Ballard Construction Company for preliminary work on the construction of five new schools. The new schools will be Campostella STEM, Broad Creek, Larchmont, Ocean View, and Camp Allen. The work will include 35 percent design of the five schools, the public engagement process for each of the schools and demolition of the existing Campostella Elementary School.

IV. **Analysis**

The interim agreement covers the efforts necessary to determine the design scope and arrive at a Guaranteed Maximum Price (GMP) which will be included in the final contract agreement. This final contract agreement, which will require Council approval, in the future, will provide for the final design and construction of the five schools. The City Manager will be authorized to sign the interim agreement in 30 days.

V. **Financial Impact**

Funds for the services included in the interim and final agreements have been included in the past and future Capital Improvement Program (CIP) budgets.

**VI. Environmental**

N/A

**VII. Community Outreach/Notification**

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

**VIII. Board/Commission Action**

N/A

**IX. Coordination/Outreach**

This letter has been coordinated with the Department of Public Works and the City Attorney's office.

Supporting Material from the Department of Public Works:

- Ordinance
- Exhibit A – Interim Agreement

Form and Correctness Approved:

RAP

By

Matthew P. McNamee

Office of the City Attorney

Contents Approved:

By

DEPT.

[Signature]

NORFOLK, VIRGINIA

## ORDINANCE No.

AN ORDINANCE AUTHORIZING AND APPROVING AN INTERIM AGREEMENT BETWEEN THE CITY OF NORFOLK, NORFOLK PUBLIC SCHOOLS AND S.B. BALLARD CONSTRUCTION COMPANY UNDER THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRA STRUCTURE ACT.

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WHEREAS, on April 9, 2013, the City adopted Guidelines under the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code § 56-575.1, et seq. ("PPEA") establishing procedures for the development of public facilities through public-private partnerships pursuant to Va. Code § 56-575.3:1 of the PPEA (the "Guidelines"); and

WHEREAS, on June 25, 2013, the City amended the Guidelines; and

WHEREAS, on March 27, 2013, Ballard submitted an Unsolicited PPEA Proposal (the "Conceptual Proposal") under the PPEA to provide certain design, permitting, development and construction services in connection with the construction of five schools (the "Project"); and

WHEREAS, on or about September 29, 2013, the City and Norfolk Public Schools ("NPS"), collectively the "Owner", issued a Request for Proposals ("RFP") and invited for consideration

competing proposals, to be submitted to the Owner on or before 3:00 p.m. on November 26, 2013; and

WHEREAS, three (3) proposals were received by the Owner for conceptual stage consideration, including a more detailed proposal from Ballard. Pursuant to the Guidelines, the Owner subsequently posted the three (3) proposals for conceptual stage consideration on the City's website and made such conceptual stage proposals available for public inspection; and

WHEREAS, the Owner determined that, among other things, that it would be advantageous for the Owner to proceed with the Project using procedures for competitive negotiation, rather than sealed, competitive bids, given the probable scope, complexity and urgency of the Project; the merits of risk-sharing and the potential for added value; and the economic benefit from the Project that might otherwise not be available; and

WHEREAS, after reviewing the conceptual stage proposals, on or about December 20, 2013, the Owner selected three (3) proposals to advance to the detailed review stage in accordance with the Guidelines, retaining the right to reject any proposal at any time for any reason; and

WHEREAS, on or about January 21, 2014, Ballard submitted its detailed proposal (the "Detailed Proposal") to the Owner for detailed stage consideration; and



WHEREAS, after review of the Detailed Proposal, the Owner selected Ballard for negotiation of an interim agreement under the PPEA for the Project based upon Ballard's Conceptual Proposal, its Detailed Proposal and oral presentations, and upon the Owner's evaluations of those proposals and presentations; and

WHEREAS, the Parties have negotiated an Interim Agreement consistent with the PPEA, other applicable law, the Guidelines, Ballard's Conceptual Proposal and Detailed Proposal, and discussions between representatives of the Owner and Ballard; and

WHEREAS, having considered this Agreement and other information, the Owner has determined that the Project to be designed and constructed pursuant to an Interim Agreement serves the public purpose of the PPEA under the criteria of § 56-575.4(C) of the Virginia Code, and, accordingly, held a public hearing on the proposals on May 13, 2014 and posted this Agreement for public inspection in accordance with the PPEA and the Guidelines; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Interim Agreement between the City, NPS and Ballard, a copy of which is attached hereto as Exhibit A, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the Interim Agreement for and on behalf of the City, and to do all things necessary and proper to carry out its terms.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Interim Agreement as may be necessary in order to carry out the intent of the Council as expressed in this ordinance.

Section 4:- That this ordinance shall be in effect from and after its adoption.

## INTERIM AGREEMENT

This **INTERIM AGREEMENT** ("Agreement") is entered into this **[not less than 31 days after the Public Hearing Date]** day of June, 2014 ("Effective Date") by and between the **CITY OF NORFOLK, VIRGINIA** (the "City") and **NORFOLK PUBLIC SCHOOLS**, (collectively the "Owner") and S.B. Ballard Construction Company ("Contractor").

### RECITALS

WHEREAS, on April 9, 2013, the City adopted Guidelines under the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code § 56-575.1, *et seq.* ("PPEA") establishing procedures for the development of public facilities through public-private partnerships pursuant to Va. Code § 56-575.3:1 of the PPEA; and

WHEREAS, on June 25, 2013, the City amended the PPEA Guidelines; and

WHEREAS, on March 27, 2013, the Contractor submitted an Unsolicited PPEA Proposal (the "Conceptual Proposal") under the PPEA to provide certain design, permitting, development and construction services in connection with the construction of five schools (as more fully described hereinafter, the "Project"); and

WHEREAS, on or about September 29, 2013, the City issued a Request for Proposals ("RFP") and invited for consideration competing proposals, to be submitted to the Owner on or before 3:00 p.m. on November 26, 2013; and

WHEREAS, three (3) proposals were received by the Owner for conceptual stage consideration, including a more detailed proposal from the Contractor. Pursuant to the Guidelines, the Owner subsequently posted the three (3) proposals for conceptual stage consideration on the City's website and made such conceptual stage proposals available for public inspection; and

WHEREAS, the Owner determined that, among other things, that it would be advantageous for the Owner to proceed with the Project using procedures for competitive negotiation, rather than sealed, competitive bids, given the probable scope, complexity and urgency of the Project; the merits of risk-sharing and the potential for added value; and the economic benefit from the Project that might otherwise not be available; and

WHEREAS, after reviewing the conceptual stage proposals, on or about December 20, 2013, the Owner selected three (3) proposals to advance to the detailed review stage in accordance with the Guidelines, retaining the right to reject any proposal at any time for any reason; and

WHEREAS, on or about January 21, 2014, the Contractor submitted its detailed proposal (the "Detailed Proposal") to the Owner for detailed stage consideration; and

WHEREAS, after review of the Detailed Proposal, the Owner selected Contractor for negotiation of an interim agreement under the PPEA for the Project based upon Contractor's Conceptual Proposal, its Detailed Proposal and oral presentations, and upon the Owner's



evaluations of those proposals and presentations. For the purposes of this Agreement, S.B. Ballard Construction Company, the Contractor, shall be the "Private Entity" as defined in the PPEA; and

WHEREAS, the Parties have negotiated this Agreement consistent with the PPEA, other applicable law, the Guidelines, Contractor's Conceptual Proposal and Detailed Proposal, and discussions between representatives of the Owner and Contractor; and

WHEREAS, having considered this Agreement and other information, the Owner has determined that the Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA under the criteria of § 56-575.4(C) of the Virginia Code, and, accordingly, held a public hearing on the proposals on April 22, 2014, and posted this Agreement for public inspection in accordance with the PPEA and the Guidelines; and

NOW, THEREFORE, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. SCOPE OF SERVICES.

The Contractor agrees to provide, or cause to be provided, (i) professional architectural and engineering services and related services necessary to develop 35% design and engineering drawings for each of the five schools comprising the Project as described in Attachment "A" (the "35% Design Services"), (ii) a HAZMAT survey of the existing Ocean View and Larchmont school facilities and a supplemental HAZMAT Survey to the City's survey of the existing Campostella and Camp Allen facilities ("HAZMAT Survey Services"), and (iii) HAZMAT abatement and demolition of the existing Campostella school facility (the "Demolition Services") (the "35% Design Services, the HAZMAT Survey Services and the Demolition Services are hereinafter referred to collectively as the "Services"). The Contractor shall pay wages in accordance with Davis-Bacon Act requirements for Demolition Services.

The 35% Design Services shall be furnished for the following five schools as follows:

- A. Kindergarten through 8<sup>th</sup> grade ("K-8") school to accommodate approximately 1,100 students in the Campostella neighborhood. Campostella K-8 school shall be designed to accommodate the Science, Technology, Engineering and Mathematics ("STEM") program generally described in the Norfolk Public Schools Space Allocation Summary dated April 10, 2014 attached hereto as Attachment "B".
- B. Pre-K-5 school at Camp Allen, capable of accommodating approximately 650 students shall be designed to accommodate the program generally described on Attachment "B". Design and construction must follow applicable Federal requirements in addition to normal City and State requirements. Camp Allen PK-5 school must also be designed to meet LEED Silver standards and all Federal requirements associated with a grant from the U.S. Department of Defense, Office of Economic Adjustment to construct a new school on Federal property.



- C. Pre-Kindergarten through 5<sup>th</sup> grade ("PK-5") school to accommodate approximately 700 students from the Broad Creek neighborhood on property owned by the City. This school shall be designed to accommodate the Internal Baccalaureate ("IB") program generally described on Attachment "B"..
- D. Kindergarten through 5<sup>th</sup> grade ("PK-5") school to accommodate approximately 700 students in the Ocean View neighborhood on property owned by the City adjacent to the existing school. This school shall be designed to accommodate the program generally described on Attachment "B"..
- E. Pre-Kindergarten through 5<sup>th</sup> grade ("PK-5") school to accommodate approximately 700 students in the Larchmont neighborhood on property owned by the City adjacent to the existing school. This school shall be designed to accommodate the program generally described on Attachment "B".

The final designs of each of the schools are intended to meet current Virginia Department of Education ("VDOE") Guidelines for School Facilities, the requirements of Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 *et seq.*, and all applicable Building Codes and other Code requirements of the City of Norfolk; provided, however, the parties acknowledge and agree that the design and construction of the schools may not strictly comply with VDOE Guidelines due to size constraints or decisions by Owner concerning the program at each school. The schools should be designed with the appropriate number of classrooms, office space, and common space (i.e., cafeteria, gym, library, auditorium and playground space). The final design must also account for the surrounding facility requirements such as utility connections, relocations and upgrades, sidewalks, roadway modifications, and traffic signs and signals. The schools shall be designed to be equipped to meet proper Information Technology requirements including desired hardware, cabling and connectivity requirements. The schools shall be designed to be equipped with Furniture, Fixtures and Equipment ("FF&E").

For each school included in the 35% Design Services, Contractor shall provide an environmental analysis, topographical/boundary survey, current space needs analysis, measurement and specifications, project planning and development, conceptual design, and preliminary design as more particularly described in Attachment "A" attached hereto and incorporated herein. The preliminary design package which comprises the deliverables for the 35% Design Services will include the following items, as set forth in Attachment "A":

- a. Basis of Design Narrative
- b. Major Building Systems and Equipment Checklist (Equipment Checklist to include major building operating systems only)
- c. Phase 1 Environmental Report
- d. HAZMAT surveys
- e. Project Costs Estimate (CSI division format)
- f. Value Engineering recommendations
- g. Geotechnical survey and Report
- h. 35% Design calculations
- i. Preliminary (35% design) Drawings

- j. Site design based on applicable storm water regulations
- k. LEED Scorecard
- l. Minority Owned, Woman Owned, and Small Business participation plan

As stated above, Services under this Agreement shall also include HAZMAT Survey Services for Ocean View and Larchmont schools and Demolition Services for the existing school on the Campostella site.

Notwithstanding anything to the contrary in Attachment "A", the Services shall also include Minority Owned, Woman Owned, and Small Business participation, for which the Contractor shall submit to the Owner a report with each invoice covering Services which Contractor desires to count toward such participation; evaluation of LEED certification design goals and preparing a LEED score card for the Project, permitting the Owner to determine whether to pursue LEED certification based upon such information; development of a "Minority Owned, Woman Owned, and Small Business Involvement" participation plan, subject to review and approval by the Owner, which shall address, among other things, methods to promote local subcontractor and supplier interest in the Project; encourage partnering among minority owned, woman owned, and smaller firms; the use of job fairs and job opportunities (including but not limited to training); participation in meetings for design presentation and review to refine design criteria and direction; and 35% design of the Project with a view toward a goal that total costs of design and construction shall fall within or below the target price established by the Owner; and provision of value engineering throughout the course of the Project to meet this goal.

During performance under this Agreement, the Owner's designated representative shall be Sid Kitterman, City Engineer, and the Contractor's designated representative shall be Stephen B. Ballard. Communications related to the Project shall be through these designated representatives; however, with respect to the Owner, only the City Manager, Marcus D. Jones, has authority to issue binding decisions. Copies of any notices or correspondence sent to the City shall also be sent to the City's consultant, Jim Yatzeck of MBP, and Sid Kitterman, City Engineer.

## 2. COST OF SERVICES AND PAYMENT.

In consideration of the provision of Services by the Contractor, the Owner shall pay to the Contractor the total contract amount of \$5,000,000.00 (the "Contract Amount"). Attachment "C", attached hereto and by this reference incorporated herein, shall serve as the schedule of values for the Contract Amount.

The Contractor will submit monthly invoices for payment to the Owner, with each invoice being sent to Sid Kitterman, City Engineer, with a copy to Ronald H. Williams, Jr., Assistant City Manager. The first invoice shall be submitted no sooner than 30 days following the Effective Date of this Agreement. The final invoice shall be submitted after the Contractor has completed all Services required under this Agreement. Each invoice shall be accompanied by a schedule of values for the Services that are the subject of the invoice and shall be for the value of the Services performed during the period for which payment is requested; the Owner shall have ten (10) days following receipt of an invoice to review each invoice; no later than the tenth day following receipt of an invoice, the Owner shall notify the Contractor whether it approves or rejects the invoice in whole or



in part, providing explanation for any portions rejected. The Owner shall then pay the approved part of the invoice within twenty (20) days following its provision of notice to the Contractor. If all or any part of the invoice is rejected, the Contractor shall respond to the explanation provided by the Owner for such action and resubmit the part of the invoice which Owner rejected, upon which the Owner's review cycle will start again. A retainage amount of 5% will be withheld from each invoice until such time the Contractor has completed its Services under this Agreement or such earlier time deemed appropriate by the Owner.

### 3. PROJECT SCHEDULE

Contractor shall exercise its best efforts to perform the Services in accordance with the Project Description included in the Proposal and in all events consistent with the schedule set forth in Attachment "D" (the "Project Schedule"). The Contractor's delivery time shall be subject to the timely cooperation of the City and NPS with respect to providing all authorizations, approvals, permits and site access necessary to perform the Services.

### 4. DESIGN APPROVAL

The City shall retain the right to approve the design of the Schools. To this end, the Contractor shall cause its design professionals to prepare and submit to the City all drawings, plans, specifications and other customary design documents included in the 35% Design Services for the City's review. The design documents shall incorporate the site design and building design elements described in the Proposal. The Contractor shall conduct Public Engagement Workshops ("PEW") for each facility at the conceptual phase. The Contractor shall schedule, plan, publicize, facilitate and document input obtained in such PEWs and shall consider and incorporate input, as appropriate, into the designs. For the Preliminary Drawings furnished in connection with the 35% Design Services, the City shall provide its review comments within a period of fifteen (15) work days following the Contractor's submission, at which time the Contractor will schedule a comment review meeting with the City as further described in Attachment "A". The Contractor shall submit modified design documents as necessary to respond to the City's comments.

### 5. TERM AND TERMINATION

This Agreement shall commence on the Effective Date first written above and shall continue until terminated pursuant to the terms of this Agreement. This Agreement may be terminated by either party in the event of substantial failure or default of the other party to perform in accordance with the terms hereof through no fault of the terminating party, which failure or default continues without cure for a period of thirty (30) days after the defaulting party's receipt of written notice of default specifying the failure or default in reasonable detail.

Upon seven (7) days' written notice to the Contractor, the Owner may, for its convenience and without cause, elect to terminate the Agreement. In such event, the Owner shall pay the Contractor for all Services properly performed by the Contractor in accordance with the Agreement, plus all reasonable expenses directly attributable to such termination, within thirty (30) days following the date of the notice.

6. COMPREHENSIVE AGREEMENT

Should the parties both conclude that the Project is feasible, it is their intention to negotiate a comprehensive agreement under the PPEA which shall address the completion of design, construction and commissioning of any or all of the schools comprising the Project. At direction of the parties, counsel for the Owner and counsel for the Contractor will begin work on the framework of the comprehensive agreement during performance of the Services under this Agreement, which they will use best efforts to complete promptly. The Owner's participation in negotiation of a comprehensive agreement shall not constitute an obligation of or commitment by the Owner to execute such comprehensive agreement prior to City Council approval, which approval may be granted, denied or conditioned in its sole discretion, retaining the right to reject any proposal at any time for any reason. The comprehensive agreement will address all issues necessary for completion of design, construction and commissioning of the schools comprising the Project and shall also provide that the Contractor has voluntarily proposed a goal of fifty percent (50%) participation by Minority Owned, Woman Owned, and Small Business firms in connection with the Work to be performed under the comprehensive agreement, exclusive of work directly performed by the Contractor. The Contractor acknowledges that such Minority Owned, Woman Owned, and Small Business participation shall be a material term of the comprehensive agreement and agrees that it shall make all reasonable efforts towards achieving its proposed goal. The parties agree that General Conditions to the Comprehensive Agreement shall be in the form attached hereto as Attachment "E". Such General Conditions shall not govern the Services to be furnished under this Agreement.

7. STANDARD OF CARE.

The Contractor agrees that the standard of care for all professional design services performed under this Agreement shall be the care and skill ordinarily used by members of the design profession in the Commonwealth of Virginia practicing on similar projects. Additionally, the Contractor represents and warrants that all persons performing Services under this Agreement shall, if and to the extent legally required, be licensed and in good standing with any applicable regulatory agency for the full duration of their work in connection with the Services under this Agreement.

8. REPRESENTATIONS AND WARRANTIES.

A. The City hereby represents and warrants to the Contractor as follows:

- (1) The City is a municipal corporation duly chartered and operating under the laws of the Commonwealth of Virginia and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement.
- (2) Each person executing this Agreement on behalf of the Owner is duly authorized to execute each such document on behalf of the Owner.



- (3) Neither the execution and delivery by the Owner of this Agreement and any other documents executed concurrently herewith to which the Owner is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.
- (4) There is no action, suit, proceeding, investigation or litigation pending and served on the Owner as of the date of this Agreement which challenges the Owner's authority to execute, deliver or perform, or the validity or enforceability of this Agreement and the other related documents to which the Owner is a party, or which challenges the authority of the City and NPS officials executing this Agreement or the other related documents, and the Owner has disclosed to the Contractor any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Owner is aware.

(5) The Owner has sufficient funds to make the full payment to the Contractor.

B. The Contractor hereby represents and warrants to Owner as follows:

- (1) The Contractor represents that it does business in Virginia as a Virginia corporation, and in signing this Agreement as well as such comprehensive agreement as may be entered into between the parties, has full power and authority to bind itself to the terms thereof.
- (2) The Contractor has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under this Agreement and the other related documents to which the Contractor is a party.
- (3) Each person executing this Agreement or any other related document on behalf of the Contractor has been or will at such time be duly authorized to execute each such document on behalf of the Contractor.
- (4) Neither the execution and delivery by the Contractor of this Agreement or the other related documents to which the Contractor is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Contractor or any other agreements or instruments to which it is a party or by which it is bound.
- (5) There is no action, suit, proceedings, investigation or litigation pending and served on the Contractor which challenges the Contractor's authority to execute, deliver or perform, or the validity or enforceability of this Agreement and the other related documents to which the Contractor is a party, or which challenges the authority of the Contractor official executing this Agreement or the other related documents; and the Contractor has disclosed to the Owner any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Contractor is aware.

- (6) The Contractor is in material compliance with all laws, regulations and ordinances applicable to the Contractor or its activities in connection with this Agreement and the other related documents.
- (7) The Contractor is a financially viable and capable entity and fully able to perform its obligations under this Agreement.

9. CHANGES IN THE WORK.

Consistent with the Services the Contractor has agreed to provide as set forth in this Agreement, the Contractor will address comments received from the Owner by redesign, at no additional cost to the Owner unless such redesign is excessive based upon the stage of the Project. Notwithstanding the foregoing, Contractor may submit a claim for additional compensation if required to perform redesign that represents a substantial and material change in any school's program from the program generally described in Attachment "B". If the Owner by a written orders make changes to the scope of Services or modifies the program for any of the new school facilities generally described in Attachment "B", thereby causing an increase or decrease in the cost of, or the time required for, the performance, then an equitable adjustment may be made in the price and/or the delivery schedule. In the event the parties are unable to agree on the equitable adjustment to the price or delivery schedule, or both, then the Contractor shall proceed with the change order, but the Contractor may submit a claim for additional compensation or additional time, or both in accordance with the provisions set forth in Section 12 of this Agreement. If the Owner does not accept a claim submitted by the Contractor pursuant to this paragraph 9, the dispute shall be resolved in accordance with the provisions of Section 12 of this Agreement.

10. OWNERSHIP OF PLANS.

Upon payment of fees due to the Contractor for Services that have been performed under this Agreement, all drawings, specifications and other documents and data furnished by the Contractor to the Owner under this Agreement (collectively, the "Work Product") are deemed to be instruments of service, in which the Contractor hereby agrees to transfer and assign to the Owner all right, title and interest, including but not limited to all copyrights, and further to obtain similar transfers and assignments to the Owner from all of the Contractor's consultants who produce such Work Product for the Project. This irrevocable transfer and assignment includes but is not limited to Work Product in paper and electronic forms, and all Work Product for the Project that have been or will be prepared or created by or on behalf of the Contractor for the Project, and including all rights in and to the copyright throughout the world and any renewals or extensions thereof, as well as any and all derivations, modifications, changes, translations, revisions, elaborations, adaptations or transformations of the Work Product.

This provision shall not relieve the Contractor from, or modify the Contractor's sole responsibility for, any and all liability for its Services work under the Agreement. It is understood and agreed that all Work Product prepared by or on behalf of the Contractor for this Project will be applicable only in respect to the Project. The Work Product may be used or reused by the



Owner or others for a material extension of the Project or on any other project. The Owner has the right, itself or by and through other design professionals, to modify the Work Product prepared by the Contractor for use in connection with the Project or for any other use whatsoever without Contractor's written consent. Provided, however, the Contractor shall not be liable for any claims relating to the Work Product if such Work Product or any modification thereof is used by Owner or any other person on the Project following Contractor's termination or if used by Owner or any other person on any extension of the Project or any other project without Contractor's written consent. The Contractor shall ensure that its consultants agree in writing to the transfer and assignment of all ownership rights in the Work Product produced by the consultants for the Contractor that the Contractor has agreed to provide to the Owner in this Agreement. Notwithstanding the foregoing, neither Contractor nor its design professionals shall be required to transfer or license any rights in the REVIT software or BIM digital design package used in connection with the design of the schools. Contractor shall provide copies of the designs to the Owner in electronic format such as IFC or dwfx.

The Owner acknowledges that the Contractor or its consultants may have developed materials or intellectual property prior to entering into this Agreement, and may own other patent, trade secret and proprietary rights in techniques and concepts that were not conceived or first produced by the Contractor in performance of the Services (collectively "Contractor Intellectual Property"). Contractor Intellectual Property is proprietary to the Contractor and shall remain the Contractor's exclusive property. The Contractor will specifically identify to Owner all Contractor Intellectual Property. The Contractor hereby grants to the Owner a perpetual, worldwide, royalty free, paid-up, irrevocable, non-exclusive, license to Contractor's Intellectual Property to the extent it is incorporated in any Work Product delivered to the Owner by the Contractor hereunder.

#### 11. INDEMNIFICATIONS.

The Contractor will indemnify, defend and hold harmless the City, NPS, their officers, directors, members, partners, employees, agents, consultants and subcontractors against any claims as further described below:

The Contractor shall defend any action or proceeding brought against the City or NPS based on any claim that the Work Product, or any part thereof, or the operation or use of the Work Product or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. The Owner shall give prompt written notice to the Contractor of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. The Contractor shall indemnify and hold harmless the City and NPS from and against all damages and costs, including but not limited to reasonable attorneys' fees and expenses awarded against the City, NPS or the Contractor in any such action or proceeding. The Contractor agrees to keep the Owner informed of all developments in the defense of such actions. If the Owner or NPS is enjoined from the operation or use of the Work Product, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, the Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work Product. If the Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at the Contractor's option and at the Contractor's expense, (1) modify



the Work Product so as to avoid infringement of any such patent or copyright, (2) replace said Work Product with Work Product that does not infringe or violate any such patent or copyright or (3) terminate this Agreement and its Services hereunder, in which case Owner shall pay Contractor for all Services properly performed by Contractor prior to such termination. These provisions shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by the Owner and not offered or recommended by Contractor to the Owner or (ii) arising from modifications to the Work Product by or at the direction of the Owner or its agents.

Contractor acknowledges that the City and NPS are public entities and the Sites are owned by a public entity and as such, the Site is immune from mechanic's liens, and Contractor hereby waives any and all mechanic's lien rights it may purport to have, and agrees that it shall neither file nor assert any such lien claims. Additionally, provided that the Owner is not in breach of its contractual obligation to make payments to the Contractor for the Services performed, the Contractor shall indemnify, defend and hold harmless the Owner from any claims or mechanic's liens brought against the City, NPS or against the Project as a result of the failure of the Contractor, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Services. Within three (3) days of receiving written notice from the Owner that such a claim or mechanic's lien has been filed, the Contractor shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If the Contractor fails to do so, the Owner will have the right to discharge the claim or lien and hold the Contractor liable for costs and expenses incurred, including attorneys' fees.

To the fullest extent permitted by laws and regulations, the Contractor shall indemnify and hold harmless the City, NPS, their officers, directors, members, partners, employees, agents, consultants and subcontractors from and against all liability, claims, costs, losses, and damages (direct and indirect, and including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) to the extent caused by the negligence or willful misconduct of Contractor or any of its subcontractors, suppliers, design consultants or any other individual or entity directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, in the performance of the Services under this Agreement, provided that any such liability, claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than to the Work itself), including the loss of use resulting therefrom, except to the extent such injury, sickness, disease, death or property damage or destruction is caused by the negligence or willful misconduct of the Owner or any third party not a subcontractor, supplier or design consultant of Contractor or other individual or entity for whose acts the Contractor is liable.

If an employee of the Contractor, its subcontractors, suppliers, design consultants or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against the City, NPS, their officers, directors, employees, or agents, the Contractor's indemnity obligation set forth above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for the Contractor, its



subcontractors, suppliers and design consultants or other entity under the workers' compensation laws. This Section survives the expiration or termination of this Agreement.

## 12. DISPUTE RESOLUTION.

Dispute Avoidance: The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the Contractor and the Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. The Contractor shall continue to perform the work required under the Agreement and the Owner shall continue to satisfy its payment obligations to the Contractor, pending the final resolution of any dispute or disagreement between the Contractor and the Owner.

Initial Claim: If either the Contractor or the Owner believes that it is entitled to relief against the other for any event arising out of or related to the Agreement or related to the Project, such party shall provide written notice of its intent to make a claim to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained elsewhere in this Agreement. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed ten (10) business days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice of intent shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief; the actual claim shall be made as soon thereafter as possible. All claims by the Contractor must be made not later than sixty (60) days after final payment, and must include the specific contractual adjustment or relief requested and the basis of such request. Each party agrees to promptly respond, in writing, to claims of the other party, but no later than sixty (60) days after submission of a fully documented claim. The failure to respond in writing to a claim within sixty (60) days shall constitute the other party's decision to deny the claim. If the claiming party is not satisfied with such decision, it shall undertake the dispute resolution process set forth below.

Litigation: Whenever a party disagrees with the other party's decision on a claim or dispute arising under or related to this Agreement, its sole recourse shall be by filing, within six (6) months of date of the other party's decision, an action or suit in the Circuit Court of the City of Norfolk, Virginia, and such aggrieved party may pursue all available appeals from such court. Such court shall have exclusive and binding original jurisdiction and venue over any and all claims arising under this Agreement.

Mediation: Prior to filing litigation, the parties may first endeavor to resolve any disputes or claims between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation, with the site of the mediation being held in or near the City of Norfolk, Virginia. If the parties agree to attempt mediation, then within 30 days of receipt of the notice requesting mediation, the Contractor and the Owner shall attend a formal mediation conducted by a single, impartial mediator appointed by and under the rules of The McCammon Group. The parties shall share evenly the fees of the mediator and each shall bear its own costs involved in



participating in the mediation. If they opt to mediate, the Owner and the Contractor shall participate in the mediation process in good faith. The process shall be concluded within 45 days of filing of the notice requesting mediation. Should the dispute or claim remain unresolved following mediation or should the time limit for filing litigation set forth in this Agreement occur during the course of mediation, either party may proceed to file litigation in order to preserve its rights, but mediation shall not extend the time period set forth to file litigation. If the claim or dispute is not resolved by mediation, failure to file an appeal of the other party's final decision within six (6) months after such decision is issued in writing shall result in the other party's final written decision becoming final and subject to no further appeal.

Injunctive Relief: Nothing in this Agreement shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the City of Norfolk, Virginia if circumstances so warrant.

Consequential Damages: EXCEPT AS OTHERWISE PROVIDED HEREIN, NEITHER THE OWNER NOR THE CONTRACTOR SHALL BE ENTITLED TO SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING UNDER ANY LEGAL, IMAGINED OR REAL CIRCUMSTANCE ARISING IN CONTRACT, WARRANTY, TORT NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT, STRICT LIABILITY OR ANY OTHER PERMISSIBLE THEORY FOR ANY CLAIM, INCLUDING, BY WAY OF ILLUSTRATION BUT NOT LIMITATION, LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING FROM THE OTHER PARTY TO THIS AGREEMENT. Nothing in the foregoing paragraph shall be construed as a disclaimer or waiver of consequential damages (including but not limited to delay damages) arising out of or relating to a breach of the Comprehensive Agreement.

13. ANNUAL APPROPRIATION.

The financial obligations of the City contained in this Agreement are subject to annual appropriation.

14. FILING WITH AUDITOR OF PUBLIC ACCOUNTS.

Within thirty (30) days after the date of this Agreement, the Owner shall submit a copy of this Agreement to the Auditor of Public Accounts, to the extent required by § 56-575.9(F) or § 56-575.18 of the Code of Virginia.

15. FINANCIAL STATEMENTS.

The Contractor agrees to provide the Owner with copies of its complete and current financial statement upon request of the Owner. The financial statements provided need not be audited, but if the Contractor does have the financial statements audited, it shall supplement its initial submission of an unaudited financial statement for the year concerned with copies of audited statements within thirty (30) days after they become available. The Contractor hereby designates such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act.



16. INSURANCE.

The Contractor will maintain a general liability policy with \$1,000,000 combined single limits. Coverage is to be on an occurrence basis with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The insurer must list the City of Norfolk and NPS as an additional insureds. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient.

The Contractor will maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits and be with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. As an alternative, it is acceptable for the Contractor to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance. The Contractor will also carry employers liability insurance with a limit of at least \$100,000 bodily injury by accident/\$500,000 bodily injury by disease policy limit/\$100,000 bodily injury by disease each employee.

The Contractor will maintain automobile liability insurance with limits of at least \$1,000,000. The coverage is to be written with a symbol "1". The insurer must be licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better.

The Contractor's design professional will maintain professional liability insurance with a limit of at least \$2,000,000. If the Contractor's design professional has professional liability insurance on a *claims made* basis, an endorsement must be issued providing that coverage will be maintained for at least three years beyond the expiration date of the policy in force at the time of this Agreement. Coverage is to be with a company licensed to conduct business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better.

With all policies listed above, the insurer or agent of the insurer must issue a certificate of insurance and applicable endorsements to show evidence of coverage and shall provide copies of the policies along with applicable endorsements, including but not limited to additional insured endorsements (if applicable). Such endorsement(s) shall provide that the Contractor's insurer shall provide thirty (30) days' advance written notice to Owner of the cancellation or non-renewal of Contractor's coverage.

17. NON-DISCRIMINATION.

The Contractor covenants and agrees that during the performance of this Agreement:

A. The Contractor shall conduct its activities in connection with the Project in compliance with all requirements imposed pursuant to Title 2.2, Chapter 42, §§ 4200 *et seq.* of the *Code of Virginia*; §§ 2.2-4310 and 2.2-4311 of the *Code of Virginia*; Titles VI and VII of the Civil Rights Act of 1964, as amended; § 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and all applicable rules and regulations.

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that it is an equal opportunity employer.

(3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section 15.

B. The Contractor will include the provisions of the foregoing subsections (1), (2) and (3) in every subcontract or purchase order of over \$ 10,000, so that the provisions will be binding upon each subcontractor or vendor.

#### 18. DRUG-FREE WORKPLACE.

A. During the performance of this Agreement, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Section 16, "drug-free workplace" means a site for the performance of work done in connection with this Agreement where the employees of the Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

B. The Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all the Contractor, subcontractor and supplier personnel at the Project:

(1) The manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically prescribed use of prescription drugs; and

(2) The impairment of judgment or physical abilities due to the use of alcohol, marijuana or other drugs, including impairment from prescription drugs.



19. FEDERAL IMMIGRATION LAW.

The Contractor does not, and shall not during the performance of this Agreement knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

20. AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH.

Contractor hereby represents that it is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

21. INDEPENDENT CONTRACTOR.

The parties understand and agree that the Contractor, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent, employee or partner of the Owner.

22. GOVERNING LAW AND VENUE.

This Agreement shall be governed by, and construed in accordance with the laws of the Commonwealth of Virginia. Venue shall be in the City of Norfolk, Virginia.

23. CONTRACT DOCUMENTS.

In addition to the Attachments previously referenced, the following documents are incorporated by reference into and made an integral part of this Agreement:

- (a) City's RFP dated September 29, 2013.
- (b) Contractor's Conceptual Proposal dated March 27, 2013.
- (c) Contractor's Detailed Proposal dated January 21, 2014.

24. CONDITIONS PRECEDENT AND SUBSEQUENT TO AGREEMENT'S EFFECTIVENESS.

It shall be a condition precedent to this Agreement's effectiveness that: (i) it first be approved by the City Council as evidenced by the signature of the City Manager on behalf of the Owner on the signature pages hereof; and (ii) it shall be executed in full with all exhibits attached by the Owner and Contractor on or before June 1, 2014.

26. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Interim Agreement or any counterpart hereof to produce or account for the other counterparts.

IN WITNESS WHEREOF the undersigned have executed this contract on the dates set forth beside their respective signatures.



CITY OF NORFOLK

By: \_\_\_\_\_  
Marcus D. Jones, City Manager

Attest:

\_\_\_\_\_  
City Clerk

Contents Approved:

\_\_\_\_\_  
Director of Public Works

Approved as to Form and Correctness:

\_\_\_\_\_  
Martha P. McGann  
Deputy City Attorney

NORFOLK PUBLIC SCHOOLS

By: \_\_\_\_\_  
Superintendent

S.B. BALLARD CONSTRUCTION COMPANY

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Project Executive

**CERTIFICATION OF FUNDING**

I hereby certify that the money required for this Agreement is in the City Treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose.

Account No.: \_\_\_\_\_

Amount \$ \_\_\_\_\_

Contract # \_\_\_\_\_

Vendor Code: \_\_\_\_\_

Business License #: \_\_\_\_\_

\_\_\_\_\_  
Director of Finance

\_\_\_\_\_  
Date



Attachment A:

"35% Design Services" shall consist of the following:

### **PRELIMINARY DESIGN PHASE – SCOPE OF WORK**

The contractor shall meet with the City, NPS, the community and project stakeholders to review program areas and spaces, produce a final building program space list for each facility, and develop conceptual designs for the buildings and sites for each facility.

No more than 60 days after the final concept design and second community meeting (provided the concept design is approved by the City) for each facility, the contractor shall complete the design for each of the five (5) projects to a 35% level of completion. The contractor's submittal for the 35% design package for each project shall include the following:

- a. Basis of Design Narrative: The narrative shall describe the project scope, the functional and operational criteria to be met, and justification for the decisions or choices made.
- b. Major Building Systems and Equipment Checklist (Equipment Checklist to include the following:):
  - i. Plumbing Fixture Schedule
  - ii. Packaged RTU
  - iii. VAV Schedule
  - iv. Unit Heaters Schedule
  - v. Diffuser, Grille, and Register Schedule
  - vi. Exhaust Fan Schedule
  - vii. Louver Schedule
  - viii. Lighting Fixture Schedule
- c. Phase 1 Environmental Report
- d. HAZMAT surveys for existing Ocean View and Larchmont facilities and supplemental HAZMAT surveys to the City's surveys of the existing Campostella and Camp Allen facilities
- e. An updated detailed cost estimate for each facility at the 35% design stage.
- f. Value Engineering recommendations based on a limited Value Engineering review with City, NPS, and contractor.
- g. Geotechnical Report: Prepare a geotechnical engineering report based on results of soil test borings, test pit excavations, laboratory testing, and engineering analysis. Geotechnical recommendations will include building foundation type, including maximum allowable foundation capacities and embedment. Prepare recommendations that address site preparation and grading, suitability of on-site soils to be used as fill, fill placement and compaction, seismic site classification, floor slab support considerations, lateral earth pressure considerations (if below grade walls or retaining walls will be constructed), pavement design considerations, and excavation and construction quality control considerations.
- h. Calculations: Calculations for each discipline. Indicate design criteria, loadings, assumptions, evaluations and comparisons of alternative systems, cost factors and other

considerations which support the systems selection as shown on the preliminary drawings. (These are not final calculations, only preliminary calculations sufficient to validate major systems are sized appropriately, and accordingly, able to be properly cost estimated.)

- i. Traffic, utility, and other studies necessary to validate the site and building designs and to identify any related required improvements.
- j. Title Sheet Drawings
  - i. Edition of the VUSBC the design is based.
  - ii. VUSBC Construction Type
  - iii. Use Groups per VUSBC
  - iv. Other major codes used as a basis for design.
  - v. Maximum VUSBC occupancy for each level and total for the building.
  - vi. Location and vicinity maps noted to show project location.
  - vii. Tabulation of floor areas in SF, total area.
  - viii. Tabulation of units: numbers of parking spaces, bleacher seats, etc.
  - ix. Listing of applicable codes and dates.
  - x. Building purposes/occupancy.
  - xi. Design occupant load for each level and total for the building.
  - xii. Index of drawings.
  - xiii. The uniform date of the completed documents.
- k. Site Drawings
  - i. Plan scale and north arrow.
  - ii. New and existing elevation contours affected by the work.
  - iii. Floor and contour elevations.
  - iv. Applicable boundaries and survey computations.
  - v. Dimensioned relationship of new work to boundaries and existing structures.
  - vi. Location of test borings.
  - vii. Location and quantities of general and accessible parking spaces.
  - viii. Accessible routes.
  - ix. Pedestrian traffic routes.
  - x. Items to be demolished: structures, walks, utilities, trees, etc. Civil demolition drawings will be markups of the site surveys and informal working documents between the civil engineer, SBBCC and the demolition contractor. These drawings are not required for permitting and are not required for 35% Design Services, but informal drawings will be available upon request.
  - xi. Basis of design description of proposed landscaping (planting materials).
  - xii. Existing and new utilities: storm drainage, sanitary sewers, water distribution, fuel gas distribution, building utility distribution pipes and tunnels, electric and telephone poles and lines, hydrant locations, and data on fire flow test, etc.
  - xiii. Site improvements such as fencing, lighting, etc.
  - xiv. Typical paving section for proposed types/thicknesses.
  - xv. Identify/show special earthwork recommended and construction considerations noted in geotechnical report.
  - xvi. Preliminary Erosion & Sediment ("E&S") control plans.



- xvii. Site surveys and plats for the purpose of demonstrating clear title to land so as to allow any demolition and construction activities.
- I. Demolition Drawings (as applicable)
  - i. Identify items to be removed
  - ii. Asbestos Disclosure Statement
  - iii. Lead Disclosure Statements
  - iv. Floor plans showing building size (existing drawings as made available by Owner, no field measuring or cad plans included)
  - v. Description of existing hazardous material to be removed
  - vi. Elevation (drawn or photographic of building) (existing drawings as made available by Owner, no field measuring or CAD plans included)
  - vii. Detailed description with plans as necessary to describe phased and orderly demolition of Camp Allen school.
- m. Architectural Drawings
  - i. Floor Plans
    - 1. Plans of each floor at  $1/8'' = 1'-0''$  scale, minimum
    - 2. Overall dimensions
    - 3. Space names and numbers
    - 4. Identification of openings, entrances, and delivery areas. (Door schedule not included)
    - 5. Identification of accessible routes
    - 6. Plan scale and north arrow
  - ii. Roof Plan
    - 1. Proposed and existing primary and emergency roof drains.
    - 2. Roof slope:  $1/4''$  per  $1'-0''$  to drain minimum for all low-slope roof areas.
    - 3. Slope (high to low) with direction arrows
    - 4. Major Preliminary Equipment
    - 5. Preliminary Roof penetrations and structures
    - 6. Typical roofing section identifying materials
    - 7. Access to roof and roof mounted equipment.
  - iii. Exterior Elevations (Scale  $1/8'' = 1'-0''$  minimum)
    - 1. Openings: windows (including operable notation), doors, louvers, and vents.
    - 2. Percentage of glass vs. gross wall areas (Per elevation and/or exposure).
    - 3. Floor elevations
    - 4. Identification of all major finishes
    - 5. Stairs, ramps, and railings
    - 6. Preliminary rooftop equipment and structures
    - 7. Expansion and preliminary control joints
    - 8. Grade at the face of the building wall
    - 9. Subsurface construction (dotted in)
  - iv. Small Scale Section (Scale:  $1/16'' = 1'-0''$  minimum)
    - 1. One longitudinal and one transverse section, minimum
    - 2. Floor Elevations

3. Indication of ceilings in relation to floor
4. Method and extent of insulation of exterior envelope. (via wall sections, not elev's)
- v. Wall Sections (Scale:  $\frac{3}{4}" = 1'-0"$  minimum)
  1. One section for each type of typical wall construction and other sections as requested by the City for clarity
  2. Identification of materials and components
  3. Identification of insulation type including "R" value
  4. Identification of air barrier and vapor barrier.
- vi. Finish Schedule
  1. 35% finish schedule may be included in the Basis of Design narrative or on drawing, indicating proposed finishes for all spaces.
  2. Give ceiling height of typical interior spaces.
- vii. Furnishing/Equipment Drawings
  1. Show equipment to approximate scale (major equipment for building systems only)
  2. Show built-in furnishings to scale. (casework, plan only, not elevations)  
Typical classroom layouts.
- n. Structural Drawings
  - i. Provide Live Loads, Snow Loads, Wind Loads, and Seismic Criteria used for structural design.
  - ii. Show design bearing/support capacity (soil bearing, pile capacity, caisson capacity) for foundation system.
  - iii. Provide the design lateral active and at-rest earth pressures, where applicable.
  - iv. Provide Foundation Plan indicating type & tentative sizes.
  - v. Provide Foundation details of improved bearing strata and other special requirements.
  - vi. Provide Floor Framing Plans of each level indicating type of system and tentative member sizes/depths and column spacing
  - vii. Provide roof framing plan
  - viii. Provide typical section of framing identifying materials, thicknesses, and depths.
  - ix. Provide typical section of floor system.
  - x. Identify elements of proposed lateral force resisting system.
- o. Fire Protection Drawings and Calculations
  - i. Indicate extent of fire protection sprinkler system and fire detection/fire alarm systems. Normally identified in code information + performance specification.
  - ii. Indicate paths of means of egress, paths of exit access, travel distances and common paths of travel. Indicate specific locations where access controls or security locking systems will be provided within means of egress paths.
  - iii. Indicate rating of all fire resistance-rated assemblies, including smoke barriers.
  - iv. With reference symbols, completely show routes of all fire walls, fire barriers, (including exit access corridor walls), and smoke partitions to illustrate continuity of fire-resistance ratings.



- v. With reference symbols, identify the extent of all fire-rated floor/ceiling and roof/ceiling assemblies.
  - vi. Indicate location of all portable fire extinguisher cabinets
  - vii. Provide a matrix that defines "fire-resistance rating requirements" for building elements including exterior walls, fire walls, fire barriers, shaft enclosures, fire partitions, smoke barriers and horizontal assemblies. Matrix shall indicate the listed design assemblies proposed to achieve the required fire resistance ratings.
- p. Plumbing Drawings
- i. Provide plans of each floor noting fixture locations and types.
  - ii. Provide riser diagrams for all piping systems.
  - iii. Provide location of main entry / discharge for water supply and distribution, sanitary drainage, storm drainage, and sprinkler services to the building.
  - iv. Provide plumbing fixture schedule.
  - v. Provide location, sizes and type of water heaters/heat exchanges, storage tanks, flues, etc.
  - vi. Provide fuel gas piping layout and connected load, if applicable.
- q. Mechanical (HVAC) Drawings
- i. **PROVIDE MAJOR EQUIPMENT. VAV BOX LOCATIONS AND TYPICAL CLASSROOM LAYOUT**
  - ii. Provide plans of each floor showing single line duct layouts, tentative air (supply, return, exhaust) quantities, equipment locations, and layouts and general routing of heating/cooling piping.
  - iii. Provide equipment schedules with tentative sizes, capacities, ID#, features, etc.
  - iv. Indicate locations of main fans, pumps, compressors, air handling equipment, dampers, etc.
  - v. Provide preliminary layout and elevation of equipment room and/or central system showing configuration, tie-ins, etc., as necessary to describe system.
  - vi. Provide central heating or cooling plants, distribution piping, equipment.
- r. Electrical Drawings
- i. Lighting plans for each floor showing approximate fixture location, type, and lighting level required for typical classroom layouts (in foot candles).
  - ii. Power distribution plans showing location of incoming services, generators, and panelboards.
  - iii. Show demarcation points for communications, fire alarm, EMCS, and other pertinent systems.
  - iv. Floor proposed locations for receptacles, telephone outlets, and switches.
  - v. It is the contractor's responsibility to contact the utility company during development of project design in order to determine the available fault current at the project site.
  - vi. Provide the following for the fire alarm systems:
    - 1. Indicate locations of the fire alarm system alarm-initiating and notification appliances.
    - 2. Indicate locations of the fire alarm control and trouble signaling equipment.

- s. LEED scorecard to demonstrate compliance as a LEED certifiable project. Will not include calculations for schools other than possibly Camp Allen, which is required to be certified. All others will have a checklist that could be used as a general guideline if certification were to be pursued.
- t. Minority Owned, Woman Owned, and Small Business Participation plan outlining contractor's plan for achieving its stated goal of 50% participation

Following submittal of the 35% design submittal package for each facility and City/NPS subsequent review, the Contractor shall meet with the City and NPS for a one day conference to discuss and review comments. Contractor shall provide consolidated copies of all City/NPS review comments with annotations of Contractor's actions beside them. Contractor shall notify the City in writing within five (5) days after receipt of City/NPS comments if the Contractor disagrees with comments technically or interprets comments to exceed the requirements of the Agreement.

City/NPS review of design submittals shall not relieve the Contractor from responsibility for any variation from the requirements of the Agreement, including the technical and performance criteria proposed by the Contractor within its Conceptual and Detailed phase PPEA proposals, unless Contractor has in a separate written communication at the time of submission called the City's attention to each such variation and the City has given written approval.

Subject to the limitations set forth in the Agreement, Contractor shall submit a revised design submittal package based on comments received by the City/NPS from their review of the initial 35% design package.

### **CAMPOSTELLA HAZMAT ABATEMENT AND DEMOLITION**

Perform HAMAT abatement and demolition of the existing Campostella facility based on the following:

- a. Submit an asbestos abatement and demolition plan prior to start of demolition. Plan elements shall include but not be limited to the following:
  - i. Plan showing extent of abatement and demolition activities.
  - ii. Safety and protection plan for personnel and property
  - iii. Disconnection schedule for utility services
  - iv. Detailed description of methods and equipment to be used for operation and the sequence of operations
- b. Comply with all local, state, and federal requirements for HAZMAT removal.
- c. Remove rubbish and debris from project; do not allow accumulations. Remove rubbish and debris from property daily or store materials that cannot be removed daily in areas acceptable to the City.



- d. Do not disturb existing site beyond the extent indicated or necessary for installation of new construction. Provide protective measures to control accumulation and migration of dust and dirt in all work areas.
- e. Before beginning any demolition, survey the site and examine the demolition plan to determine the extent of the work. Record existing conditions in the presence of the City showing the condition of structures and other facilities adjacent to areas of alteration or removal. Photographs sized 4 inch will be acceptable as a record of existing conditions. Submit survey results.
- f. Comply with excavating, backfilling, and compacting procedures for select soils used as backfill materials to fill voids, depressions, or excavations resulting from demolition of structures.
- g. Completely remove and dispose in a legal manner, the existing structure including foundations, slabs, building structure, roofs, and interior construction.
- h. Remove existing utilities and terminate in a manner conforming to nationally recognized code covering the specific utility.
- i. The City/NPS will maintain title to the following materials and cause them to be removed from the project site:
  - i. Fire Alarm Panel

**ATTACHMENT B**  
**SPACE ALLOCATION SUMMARY**  
**NORFOLK PUBLIC SCHOOLS**  
**Space Allocation Summary**  
**APPROVED 04/10/14**

**PROPRIETARY & CONFIDENTIAL**

**Program Summary**

**Broad Creek PK-5 IB School**

**SPACE DESCRIPTION**

SPACE DESCRIPTION	NPS APPROVED PROGRAM					TOTAL STUDENTS
	NUMBER OF RMS	NET SQ FT PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SF	
<b>Core Classrooms</b>						
Pre-Kindergarten	5	975	18	5	4,875	90
Kindergarten	5	975	19	5	4,875	95
1st Grade	5	975	19	4	4,875	95
K/1 Common Space	1	2,000			2,000	0
2nd Grade	5	800	19	4	4,000	95
3rd Grade	5	800	19	4	4,000	95
2/3 Common Space	1	2,000			2,000	0
4rd Grade	4	800	25	4	3,200	100
5th Grade	4	800	25	4	3,200	100
4/5 Common Space	1	2,000			2,000	0
Special Education	4	860	8	4	3,440	32
Shared Project Rooms	8	216	0	0	1,728	0
Shared Toilet Rooms	8	60	0	0	480	0
<b>Core Classrooms Total</b>	<b>40</b>			<b>34</b>	<b>40,673</b>	<b>702</b>
<b>Art Suite</b>						
Art Room	1	1,200		1	1,200	
Art Storage	1	200			200	
Kiln Room	1	100			100	
<b>Art Total</b>				<b>1</b>	<b>1,500</b>	
<b>Music Suite</b>						
Music Room	1	850			850	
Band/Orchestral/Choral	1	1,200			1,200	
Instrument Storage	1	300			300	
Music Office	1	150		2	150	
<b>Music Total</b>				<b>2</b>	<b>2,500</b>	
<b>Science Suite</b>						
Science Lab - Included in Common Space	1	1,100			1,100	
Prep Room	1	150			150	
<b>Science Total</b>				<b>0</b>	<b>1,250</b>	
<b>Classroom Wing Support</b>						
Book Storage	3	120			360	
Teacher Workroom	2	460			920	
Instructional Supplies	2	180			360	
Resource Room	2	400			800	
Computer Lab	1	700		2	700	
Exploratory / Multi-Purpose	1	1,000			1,000	
Occupational Therapy / Physical Therapy	1	640		1	640	
Itenerant Office	1	130			130	
<b>Classroom Wing Support Total</b>				<b>4</b>	<b>4,910</b>	



**ATTACHMENT B**  
**SPACE ALLOCATION SUMMARY**

**PROPRIETARY & CONFIDENTIAL**

**NORFOLK PUBLIC SCHOOLS**  
**Space Allocation Summary**  
**APPROVED 04/10/14**

**Program Summary**

**Broad Creek PK-5 IB School**

**SPACE DESCRIPTION**

**Main Office**

NPS APPROVED PROGRAM					
SPACE DESCRIPTION	NUMBER OF RMS	NET SQ FT PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SF
Reception	1	120			120
Clerical	1	200		2	200
Work Room / Mail Room	1	200			200
Attendance Office	1	100		1	100
Bookkeeping	1	100		1	100
Principal	1	200		1	200
Principal's Toilet	1	60			60
Assistant Principal	1	100		1	100
Instructional Specialist	1	150		1	150
Lead Teacher's Office	1	100		1	100
Office - Itinerant	1	100		1	100
Unisex Staff Toilet	1	60			60
Administration Storage	1	100			100
Administration Conference	1	200			200
<b>Main Office Total</b>				<b>10</b>	<b>1,790</b>

**Clinic**

Clinic Waiting	1	100			100
Clinic Exam Room	1	100			100
Cot Area	1	100			100
Clinic Nurse Office	1	80		1	80
Clinic Toilet	1	60			60
Clinic Shower/Changing	1	50			50
Clinic Storage	1	30			30
Clinic Washer/Dryer	1	30			30
<b>Clinic Total</b>				<b>1</b>	<b>550</b>

**Guidance**

Guidance Reception	1	120			120
Guidance Counselor Office	1	100		1	100
Guidance Conference	1	150			150
Guidance Storage	1	60			60
Guidance Toilet	1	60			60
Records	1	80			80
<b>Guidance Total</b>				<b>1</b>	<b>570</b>

**Main Office Support**

Security Vestibule	1	290		1	290
Main Entry Lobby	1	1,200			1,200
School Store	1	100			100
Parent Resource Room	1	600		1	600
Parent Volunteer Work Area	1	150			150
<b>Main Office Support Total</b>				<b>3</b>	<b>2,340</b>

**TOTAL STUDENTS**

**ATTACHMENT B**  
**SPACE ALLOCATION SUMMARY**

**PROPRIETARY & CONFIDENTIAL**

**NORFOLK PUBLIC SCHOOLS**  
**Space Allocation Summary**  
**APPROVED 04/10/14**

**Program Summary**

**Broad Creek PK-5 IB School**

**SPACE DESCRIPTION**

**Library / Media Center**

NUMBER OF RMS	NET SQ FT PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SF	TOTAL STUDENTS
1	1,500			1,500	
1	900			900	
2	65			130	
1	120		1	120	
1	300			300	
1	350			350	
1	120			120	
1	300			300	
1	200			200	
1	60			60	
			1	3,980	

**Cafetorium / Food Service**

1	85			85	
1	125			125	
1	200			200	
1	85			85	
1	120		1	120	
1	500			500	
1	400			400	
1	800		2	800	
1	110			110	
1	1,200		2	1,200	
1	250		1	250	
1	3,000			3,000	
1	1,600			1,600	
1	60			60	
1	250			250	
1	400			400	
			6	9,185	

**Physical Education**

1	4,200			4,200	
1	200			200	
1	200			200	
1	150		3	150	
1	60			60	
1	50			50	
			3	4,860	



ATTACHMENT B  
SPACE ALLOCATION SUMMARY

PROPRIETARY & CONFIDENTIAL

NORFOLK PUBLIC SCHOOLS  
Space Allocation Summary  
APPROVED 04/10/14

Program Summary

Broad Creek PK-5 IB School

SPACE DESCRIPTION

Support Spaces

NPS APPROVED PROGRAM					TOTAL STUDENTS
NUMBER OF RMS	NET SQ FT PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SF	
Custodian Office	1 150		3	150	
Custodial Storage	1 200			200	
Custodian's Closet	4 80			320	
Laundry	1 30			30	
Student Toilets	8 200			1,600	
Staff only Toilets	3 60			180	
Elevator	1 200			200	
General Storage	1 200			200	
Main Electrical	1 300			300	
Main Mechanical	1 1,300			1,300	
<b>Support Total</b>			<b>3</b>	<b>4,480</b>	
Subtotal All Programmed Spaces			69	78,588	
Corridors, Structure, Support	31%			24,362	
<b>Grand Total - Programmed Space (SF)</b>				<b>102,950</b>	
Square Feet Per Student				162	
<b>TOTAL PLAN GROSS AREA (SF)</b>				<b>101,823</b>	

**ATTACHMENT B**  
**SPACE ALLOCATION SUMMARY**  
**NORFOLK PUBLIC SCHOOLS**  
**Space Allocation Summary**  
**APPROVED 04/10/14**

**PROPRIETARY & CONFIDENTIAL**

**Program Summary**

**Larchmont PK-5 Elementary School**

**SPACE DESCRIPTION**

**Core Classrooms**

Pre-Kindergarten	5	975	18	5	4,875	90
Kindergarten	4	975	24	5	3,900	96
1st Grade	4	975	24	4	3,900	96
2nd Grade	4	800	24	4	3,200	96
3rd Grade	4	800	24	4	3,200	96
4rd Grade	4	800	25	4	3,200	100
5th Grade	4	800	25	4	3,200	100
Special Education	4	860	8	4	3,440	32
Shared Project Rooms	8	216			1,728	
Shared Toilet Rooms	7	60			420	
<b>Core Classrooms Total</b>	<b>33</b>			<b>34</b>	<b>31,063</b>	<b>706</b>

**Art Suite**

Art Room	1	1,200		1	1,200	
Art Storage	1	200			200	
Kiln Room	1	100			100	
<b>Art Total</b>				<b>1</b>	<b>1,500</b>	

**Music Suite**

Music Room	1	850			850	
Instrument Storage	1	300			300	
Music Office	1	150		2	150	
<b>Music Total</b>				<b>2</b>	<b>1,300</b>	

**Science Suite**

Science Lab	1	1,100		1	1,100	
Prep Room	1	150			150	
<b>Science Total</b>				<b>1</b>	<b>1,250</b>	

**Classroom Wing Support**

Book Storage	3	120			360	
Teacher Workroom	2	460			920	
Instructional Supplies	2	180			360	
Resource Room	2	400			800	
Computer Lab	1	700		2	700	
Exploratory / Multi-Purpose	1	1,000			1,000	
Occupational Therapy / Physical Therapy	1	640		1	640	
Itenerant Office	1	130			130	
<b>Classroom Wing Support Total</b>				<b>4</b>	<b>4,910</b>	



**ATTACHMENT B**  
**SPACE ALLOCATION SUMMARY**

**PROPRIETARY & CONFIDENTIAL**

**NORFOLK PUBLIC SCHOOLS**  
**Space Allocation Summary**  
**APPROVED 04/10/14**

**Program Summary**

**Larchmont PK-5 Elementary School**

**SPACE DESCRIPTION**

SPACE DESCRIPTION	NPS APPROVED PROGRAM					TOTAL STUDENTS
	NUMBER OF RMS	NET SQ FT PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SF	
<b>Main Office</b>						
Reception	1	120			120	
Clerical	1	200		2	200	
Work Room / Mail Room	1	200			200	
Attendance Office	1	100		1	100	
Bookkeeping	1	100		1	100	
Principal	1	200		1	200	
Principal's Toilet	1	60			60	
Assistant Principal	1	100		1	100	
Instructional Specialist	1	150		1	150	
Lead Teacher's Office	1	100		1	100	
Office - Itinerant	1	100		1	100	
Unisex Staff Toilet	1	60			60	
Administration Storage	1	100			100	
Administration Conference	1	200			200	
<b>Main Office Total</b>				<b>9</b>	<b>1,790</b>	
<b>Clinic</b>						
Clinic Waiting	1	100			100	
Clinic Exam Room	1	100			100	
Cot Area	1	100			100	
Clinic Nurse Office	1	80		1	80	
Clinic Toilet	1	60			60	
Clinic Shower/Changing	1	50			50	
Clinic Storage	1	30			30	
Clinic Washer/Dryer	1	30			30	
<b>Clinic Total</b>				<b>1</b>	<b>550</b>	
<b>Guidance</b>						
Guidance Reception	1	120			120	
Guidance Counselor Office	1	100		1	100	
Guidance Conference	1	150			150	
Guidance Storage	1	60			60	
Guidance Toilet	1	60			60	
Records	1	80			80	
<b>Guidance Total</b>				<b>1</b>	<b>570</b>	
<b>Main Office Support</b>						
Security Vestibule	1	290		1	290	
Main Entry Lobby	1	1,200			1,200	
School Store	1	100			100	
Parent Resource Room	1	600		1	600	
Parent Volunteer Work Area	1	150		1	150	
<b>Main Office Support Total</b>				<b>4</b>	<b>2,340</b>	

**ATTACHMENT B**  
**SPACE ALLOCATION SUMMARY**  
**NORFOLK PUBLIC SCHOOLS**  
**Space Allocation Summary**  
**APPROVED 04/10/14**

**PROPRIETARY & CONFIDENTIAL**

**Program Summary**

**Larchmont PK-5 Elementary School**

**SPACE DESCRIPTION**

**Library / Media Center**

NUMBER OF RMS	NET SQ FT PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SF
1	1,500			1,500
1	900			900
2	65			130
1	120		1	120
1	300			300
1	350			350
1	120			120
1	300			300
1	200			200
1	60			60
			1	3,980

**Library Total**

**Cafetorium / Food Service**

1	85			85
1	125			125
1	200			200
1	85			85
1	120		1	120
1	500			500
1	400			400
1	800		2	800
1	110			110
1	1,200		2	1,200
1	250		1	250
1	3,000			3,000
1	1,600			1,600
1	60			60
1	250			250
1	400			400
			6	9,185

**Cafetorium / Food Service Total**

**Physical Education**

1	4,200			4,200
1	200			200
1	200			200
1	150		3	150
1	60			60
1	50			50
			3	4,860

**Physical Education Total**

**TOTAL STUDENTS**



ATTACHMENT B  
SPACE ALLOCATION SUMMARY

PROPRIETARY & CONFIDENTIAL

NORFOLK PUBLIC SCHOOLS  
Space Allocation Summary  
APPROVED 04/10/14

Program Summary

Larchmont PK-5 Elementary School

SPACE DESCRIPTION

Support Spaces

NPS APPROVED PROGRAM					TOTAL STUDENTS
NUMBER OF RMS	NET SQ FT PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SF	
Custodian Office	1	150	3	150	
Custodial Storage	1	200		200	
Custodian's Closet	4	80		320	
Laundry	1	30		30	
Student Toilets	8	200		1,600	
Staff only Toilets	3	60		180	
Elevator	1	200		200	
General Storage	1	200		200	
Main Electrical	1	300		300	
Main Mechanical	1	1,300		1,300	
<b>Support Total</b>			<b>3</b>	<b>4,480</b>	
Subtotal All Programmed Spaces			67	67,778	
Corridors, Structure, Support		31.0%		21,011	
<b>Grand Total</b>				<b>88,789</b>	
Square Feet Per Student				126	
<b>TOTAL PLAN GROSS AREA (SF)</b>				<b>89,496</b>	

## NORFOLK PUBLIC SCHOOLS

## Space Allocation Summary

APPROVED 04/10/14

## Program Summary

## Ocean View K-5 Elementary School

## SPACE DESCRIPTION

## Core Classrooms

NPS APPROVED PROGRAM					
NUMBER OF RMS	NET SQ FT PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SF	TOTAL STUDENTS
0	975	18	5	0	0
Pre-Kindergarten					
7	975	19	5	6,825	133
Kindergarten					
7	975	19	4	6,825	133
1st Grade					
6	800	19	4	4,800	114
2nd Grade					
5	800	19	4	4,000	95
3rd Grade					
4	800	25	4	3,200	100
4rd Grade					
4	800	25	4	3,200	100
5th Grade					
3	860	8	4	2,580	24
Special Education					
9	216	0	0	1,944	0
Shared Project Rooms					
7	60	0	0	420	0
Shared Toilet Rooms					
36			34	33,794	699
Core Classrooms Total					

## Art Suite

1	1,200		1	1,200	
Art Room					
1	200			200	
Art Storage					
1	100			100	
Kiln Room					
1			1	1,500	
Art Total					

## Music Suite

1	850			850	
Music Room					
1	300			300	
Instrument Storage					
1	150		2	150	
Music Office					
2			2	1,300	
Music Total					

## Science Suite

1	1,100		1	1,100	
Science Lab					
1	150			150	
Prep Room					
1			1	1,250	
Science Total					

## Classroom Wing Support

3	120			360	
Book Storage					
2	460			920	
Teacher Workroom					
2	180			360	
Instructional Supplies					
2	400			800	
Resource Room					
1	700		2	700	
Computer Lab					
1	1,000			1,000	
Exploratory / Multi-Purpose					
1	640		1	640	
Occupational Therapy / Physical Therapy					
1	130			130	
Itenerant Office					
4			4	4,910	
Classroom Wing Support Total					



**ATTACHMENT B**  
**SPACE ALLOCATION SUMMARY**  
**NORFOLK PUBLIC SCHOOLS**  
**Space Allocation Summary**  
**APPROVED 04/10/14**

**PROPRIETARY & CONFIDENTIAL**

**Program Summary**

**Ocean View K-5 Elementary School**

**SPACE DESCRIPTION**

SPACE DESCRIPTION	NPS APPROVED PROGRAM					TOTAL STUDENTS
	NUMBER OF RMS	NET SQ FT PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SF	
<b>Main Office</b>						
Reception	1	120			120	
Clerical	1	200		2	200	
Work Room / Mail Room	1	200			200	
Attendance Office	1	100		1	100	
Bookkeeping	1	100		1	100	
Principal	1	200		1	200	
Principal's Toilet	1	60			60	
Assistant Principal	1	100		1	100	
Instructional Specialist	1	150		1	150	
Lead Teacher's Office	1	100		1	100	
Office - Itinerant	1	100		1	100	
Unisex Staff Toilet	1	60			60	
Administration Storage	1	100			100	
Administration Conference	1	200			200	
<b>Main Office Total</b>				<b>9</b>	<b>1,790</b>	
<b>Clinic</b>						
Clinic Waiting	1	100			100	
Clinic Exam Room	1	100			100	
Cot Area	1	100			100	
Clinic Nurse Office	1	80		1	80	
Clinic Toilet	1	60			60	
Clinic Shower/Changing	1	50			50	
Clinic Storage	1	30			30	
Clinic Washer/Dryer	1	30			30	
<b>Clinic Total</b>				<b>1</b>	<b>550</b>	
<b>Guidance</b>						
Guidance Reception	1	120			120	
Guidance Counselor Office	1	100		1	100	
Guidance Conference	1	150			150	
Guidance Storage	1	60			60	
Guidance Toilet	1	60			60	
Records	1	80			80	
<b>Guidance Total</b>				<b>1</b>	<b>570</b>	
<b>Main Office Support</b>						
Security Vestibule	1	290		1	290	
Main Entry Lobby	1	1,200			1,200	
School Store	1	100			100	
Parent Resource Room	1	600		1	600	
Parent Volunteer Work Area	1	150		1	150	
<b>Main Office Support Total</b>				<b>4</b>	<b>2,340</b>	

**ATTACHMENT B**  
**SPACE ALLOCATION SUMMARY**  
**NORFOLK PUBLIC SCHOOLS**  
**Space Allocation Summary**  
**APPROVED 04/10/14**

**PROPRIETARY & CONFIDENTIAL**

**Program Summary**

**Ocean View K-5 Elementary School**

**SPACE DESCRIPTION**

**Library / Media Center**

NPS APPROVED PROGRAM					TOTAL STUDENTS
NUMBER OF RMS	NET SQ FT PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SF	
1	1,500			1,500	
1	900			900	
2	65			130	
1	120		1	120	
1	300			300	
1	350			350	
1	120			120	
1	300			300	
1	200			200	
1	60			60	
			1	3,980	
<b>Library Total</b>					

**Cafetorium / Food Service**

1	85			85	
1	125			125	
1	200			200	
1	85			85	
1	120		1	120	
1	500			500	
1	400			400	
1	800		2	800	
1	110			110	
1	1,200		2	1,200	
1	250		1	250	
1	3,000			3,000	
1	1,600			1,600	
1	60			60	
1	250			250	
1	400			400	
			6	9,185	
<b>Cafetorium / Food Service Total</b>					

**Physical Education**

1	4,200			4,200	
1	200			200	
1	200			200	
1	150		3	150	
1	60			60	
1	50			50	
			3	4,860	
<b>Physical Education Total</b>					



## NORFOLK PUBLIC SCHOOLS

## Space Allocation Summary

APPROVED 04/10/14

## Program Summary

## Ocean View K-5 Elementary School

## SPACE DESCRIPTION

## Support Spaces

NPS APPROVED PROGRAM					TOTAL STUDENTS
NUMBER OF RMS	NET SQ FT PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SF	
Custodian Office	1	150	3	150	
Custodial Storage	1	200		200	
Custodian's Closet	4	80		320	
Laundry	1	30		30	
Student Toilets	8	200		1,600	
Staff only Toilets	3	60		180	
Elevator	1	200		200	
General Storage	1	200		200	
Main Electrical	1	300		300	
Main Mechanical	1	1,300		1,300	
<b>Support Total</b>			<b>3</b>	<b>4,480</b>	
Subtotal All Programmed Spaces			67	69,859	
Corridors, Structure, Support		31.0%		21,656	
<b>Grand Total</b>				<b>91,515</b>	
Square Feet Per Student				131	
<b>TOTAL PLAN GROSS AREA (SF)</b>				<b>91,003</b>	

ATTACHMENT B  
SPACE ALLOCATION SUMMARY

PROPRIETARY & CONFIDENTIAL

# PK-5 Camp Allen School

Camp Allen	NPS APPROVED SF PROPOSED					NPS APPROVED STUDENTS
	NO. OF ROOMS	NET SF PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SQUARE FEET	
SPACE DESCRIPTION						
<b>Core Classrooms</b>						
Pre-Kindergarten	3	970	18	3	2,910	54
Kindergarten	4	970	19	4	3,880	76
1st Grade	4	970	19	4	3,880	76
2nd Grade	4	940	19	4	3,760	76
3rd Grade	4	920	19	4	3,680	76
4th Grade	4	920	25	4	3,680	100
5th Grade	3	920	25	3	2,760	75
<b>Core Classrooms Total</b>	<b>26</b>			<b>26</b>	<b>24,550</b>	
<b>Art</b>						
Classroom	1	1,301	32	1	1,301	
Storage Room	1	169	0		169	
Project Storage Room	1	129	0		129	
Kiln Room	1	83	0		83	
<b>Art Total</b>	<b>4</b>			<b>1</b>	<b>1,682</b>	
<b>Music</b>						
Choral Room	1	1,035	45	1	1,035	
Instrument Storage	1	284	0		284	
Book/Music Storage	1	215	0		215	
<b>Music Total</b>	<b>3</b>			<b>1</b>	<b>1,534</b>	
<b>Classroom Wing Support</b>						
Group Study	9	180	0		1,620	
SE K/1 w/ restroom	1	902	10	1	902	10
SE 2/3	1	851	10	1	851	10
SE 4/5	1	792	10	1	792	10
Sped Room General	1	891	8	1	891	8
SE Observation Room	3	129	0	3	387	
Reading Res/Comm Skills	1	878	0	1	878	
Math / Sci Lab / Gifted	1	1,041	0	1	1,041	
YCAPP Counseling	1	241	0	1	241	
IT Office	1	141	0	1	141	
Testing / SOL Storage	1	113	0	1	113	
ESL	1	242	0	1	242	
Speech	1	242	0	1	242	0
<b>Classroom Support Total</b>	<b>23</b>			<b>14</b>	<b>8,341</b>	<b>571</b>
<b>Administration</b>						
Security Vestibule/Waiting				1	0	
Main Office	1	4,690		3	4,690	
Principal				1	0	
Assistant Principal				1	0	
Conference Room					0	
Office Manager				1	0	
Records Storage					0	
Mail Room					0	
Matt. Storage					0	
Itinerant Office			6		0	
Guidance Office				2	0	
Book Storage					0	
Clinic				1	0	
Clinic Restrooms					0	
Psychologist/Social Worker				1	0	
Speech Pathologist Office				1	0	
Sped Conference Room					0	
Parent Resource Room					0	
Parent Technician Office					0	
Restroom					0	
Supply Storage					0	
Teacher Workroom	2	600			1,200	
<b>Administration Total</b>	<b>3</b>			<b>12</b>	<b>5,890</b>	
<b>Library / Media Center</b>						
Reading Room	1	3,000	70		3,000	
Entry/Display	1	180	0		180	
Circulation Desk	1	300	0	2	300	
Stacks		500	50		0	
Computing	1	300	24		300	



**ATTACHMENT B  
SPACE ALLOCATION SUMMARY**

**PROPRIETARY & CONFIDENTIAL**

Workroom/Office	1	350	0	2	350
Conference Room	1	140	8		140
Headend Room	1	330	0		330
Media Production/Studio	1	500	26		500
Computer Lab	1	1,100	26		1,100
Restroom	1	62	0		62
<b>Media Center Total</b>	<b>10</b>			<b>4</b>	<b>6,262</b>
<b>Cafetorium / Food Service</b>					
Cafetorium	1	3,200	0		3,200
Stage/Instrumental Music	1	1,200	0		1,200
Serving Lines	1	1,000	0	2	1,000
Food Prep / Cooking	1	800	0	2	800
Dish / Tray wash	1	150	0	1	150
Manager Office	1	100	0	1	100
Janitorial & Chemical / Soap Storage	1	80	0		80
Dry Storage	1	300	0		300
Walk-in Cooler	1	180	0		180
Walk-in Freezer	1	180	0		180
Receiving	1	80	0		80
Locker Room / Toilet	1	150	0		150
Can Wash (exterior)	1	80	0		80
Table Storage	1	250	0		250
Staff Dining	1	400	0		400
<b>Food Service Total</b>	<b>15</b>			<b>6</b>	<b>8,150</b>
<b>Physical Education</b>					
Gymnasium	1	5,590	100		5,590
Equipment Storage	2	216	0		432
Gym Storage	1	200			200
Exterior Equipment Storage	1	224	0		224
PE Office	1	182	0	4	182
<b>PE Total</b>	<b>6</b>		<b>100</b>	<b>4</b>	<b>6,628</b>
<b>Support Spaces</b>					
Custodial Office	1	224	0	4	224
Custodial Storage			0		0
Custodial Lockers			0		0
Janitor Closets	3	56	0		168
Public Restrooms	6	258	0		1,548
Main Mechanical Room	1	1,645	0		1,645
Mech / Elec Rooms	1	264	0		264
Main Electrical Room	1	196	0		196
Electrical Dist. Room	2	152	0		304
Data Rooms	3	105	0		315
Elevator	1	52	0		52
Elevator Equipment Room	1	71	0		71
Mech Mezzanine/Storage	1	1,437	0		1,437
<b>Support Total</b>	<b>21</b>		<b>0</b>	<b>4</b>	<b>6,224</b>
Subtotal All Programmed Spaces				72	69,261
Corridors, Structure, Support					28,369
<b>Grand Total</b>					<b>97,630</b>
Square Feet Per Student					171
<b>TOTAL ACTUAL GROSS AREA (SF)</b>					
Differential					

ATTACHMENT B  
SPACE ALLOCATION SUMMARY

PROPRIETARY & CONFIDENTIAL

# K-8 Campostella STEM School

Campostella STEM		NPS APPROVED PROGRAM				
SPACE DESCRIPTION	No. OF RMS	NET SF PER ROOM	STUDENTS PER ROOM	STAFF	TOTAL SQUARE FEET	TOTAL STUDENTS
<b>Core Classrooms</b>						
Kindergarten	6	975	19	6	5,850	114
Kindergarten Toilet	3	65			195	0
1st Grade w/ Toilet	6	975	19	6	5,850	114
1st Grade Toilet	3	65			195	0
K/1 STEM Commons + Storage	2	1,065			2,130	0
2nd Grade	6	790	19	6	4,740	114
3rd Grade	6	790	19	6	4,740	114
2/3 STEM Commons + Storage	2	1,065			2,130	0
4th Grade	5	790	24	5	3,950	120
5th Grade	5	790	24	5	3,950	120
4/5 STEM Commons + Storage	2	1,065			2,130	0
6th Grade	3	900	25	3	2,700	75
6th Grade - STEM/Science Labs	2	1,180	25	2	2,360	50
6 STEM Common + Storage	1	1,065			1,065	0
7th Grade	3	900	25	3	2,700	75
7th Grade - STEM/Science Labs	2	1,180	25	2	2,360	50
7 STEM Common + Storage	1	1,065			1,065	0
8th Grade	3	900	25	3	2,700	75
8th Grade - STEM/Science Labs	2	1,180	25	2	2,360	50
8 STEM Common + Storage	1	1,065			1,065	0
Flex Classrooms / Comp Lab	2	650		2	1,575	0
Flex Classrooms (medium)	3	500			1,500	0
<b>Core Classrooms Total</b>	<b>69</b>			<b>51</b>	<b>57,310</b>	<b>1071</b>
<b>Art</b>						
Art Room	2	1,195	0	2	2,390	
Art Storage	2	135,225	0		360	
Digital/Graphic Arts	1	420	0		420	
Kiln Room	1	105	0		105	
Display Cases	1	40	0		40	
<b>Art Total</b>				<b>2</b>	<b>3,315</b>	
<b>Music</b>						
General Music Room K-5	1	1,245	0	1	1,245	
Music Room 6-8	1	1,390	0	1	1,390	
Digital Media Lab (Midi)	1	445	0	1	445	
Instrument Storage Alcove (6-8)	1	170	0		170	
Instrument Storage Alcove (K-5)	1	85	0		85	
Music Office & Library	1	200	0		200	
<b>Music Total</b>				<b>3</b>	<b>3,535</b>	
<b>Classroom Wing Support</b>						
Schola	1	2,135	0		2,135	
Schola Storage	1	100	0		100	
Foreign Language Classroom	1	890	0	1	890	
Computer Lab	1	930	0	1	930	
Career Technical Education Lab	1	1,660	0	1	1,660	
CTE Office	1	135	0		135	
CTE Storage	1	65	0		65	
Nature Classroom	1	1,165	0		1,165	
Special Ed - OT/PT Room	1	400	0		400	
Special Ed - Sensory Area	1	175	0		175	
Special Ed Office	1	110	0		110	
Special Ed - Storage	1	115	0	1	115	
STEM/Science Prep and Storage	3	115	0		345	
Student Locker Areas		varies	0		2,000	
Project Labs	11	190	0		2,090	
Small Group Learning	14	60	0		840	
Small Group Learning	4	90	0		360	
Teacher Workroom	3	375	0		1,125	
Instructional Supplies	7	varies	0		860	
Book Storage	3	120	0		360	
School Store	1	135	0		135	
Itinerant Room	1	255	0		255	
<b>Classroom Wing Support Total</b>				<b>4</b>	<b>16,250</b>	



# ATTACHMENT B SPACE ALLOCATION SUMMARY

PROPRIETARY & CONFIDENTIAL

<b>Main Office</b>					
Reception / Waiting	1	155	0		155
Secretary / Open Office	1	310	0		310
Work Room / Mail Room	1	220	0		220
Administration Conference Room	1	220	0		220
Principal	1	160	0	1	160
Principal's Toilet	1	60	0		60
Assistant Principal	2	90	0	1	180
Instructional Specialist Office	1	195	0	2	195
Attendance Office	1	80	0	1	80
Bookkeeping	1	80	0	1	80
STEM Coordinator	1	85	0	1	85
Lead Teacher Office	1	100	0	1	100
Student Resource Officer (Security)	1	90	0	1	90
Itinerant Office	1	100	0	1	100
Unisex Staff Toilet	1	65	0		65
Administration Storage	1	60	0		60
Testing Materials Storage	1	40	0		40
<b>Main Office Total</b>				<b>13</b>	<b>2,200</b>
<b>Clinic</b>					
Clinic Waiting	1	100	0		100
Clinic Exam Room	2	100	0		200
Cot Area	1	175	0		175
Clinic Nurse Office	1	80	0	1	80
Clinic Toilet	1	60	0		60
Clinic Shower/Changing	1	50	0		50
Clinic Storage	1	30	0		30
Clinic Washer/Dryer	1	30	0		30
<b>Clinic Total</b>				<b>1</b>	<b>725</b>
<b>Guidance</b>					
Guidance Reception	1	130	0		130
Guidance Counselor Office	3	95	0	3	285
Guidance Conference	2	varies	0		290
Guidance Storage	1	65	0		65
Guidance Toilet			0		0
Records	1	170	0		170
<b>Guidance Total</b>				<b>3</b>	<b>940</b>
<b>Main Office Support</b>					
Security Vestibule	1	530	0	1	530
Main Entry Lobby	1	1,650	0		1,650
Student Activities Coordinator	1	200	0	1	200
Activities Storage	1	200	0		200
Parent Volunteer Work Area	1	510	0	8	510
Parent Volunteer Storage	1	150	0		150
<b>Main Office Support Total</b>				<b>10</b>	<b>3,240</b>
<b>Library / Media Center</b>					
K-5 Discovery Center	1	1,500	0	1	1,500
6-8 Discovery Center	1	2,000	0	1	2,000
Alcoves/Small Groups	4	70	0		280
Media Specialist Office	1	300	0	2	300
Work Room / Storage	1	300	0		300
Production Studio	1	350	0		350
Studio Editing/Mixing workroom	1	150	0		150
IT Office/Help Desk/Workroom	1	300	0		300
Distribution / Head End	1	200	0		200
Unisex Staff toilet	1	60	0		60
<b>Library Total</b>				<b>4</b>	<b>5,440</b>
<b>Cafetorium / Food Service</b>					
Dining (Opens to K-1 Gym)	1	4,670	0		4,670
Performance Platform	1	1,365	0		1,365
Platform Storage	1	150	0		150
Dressing Rooms	2	115	0		230
Performance Control Room			0		0
Chair /Table Storage	1	350	0		350
Kitchen & Food Prep	1	1,145	0	2	1,145
Serving Lines	4	240	0	2	960
Teacher Dining	1	400	0		400
Pot/Dish Wash	1	175	0	1	175
Dry Storage	1	160	0		160
Cold Storage	2	175	0		350
Kitchen Manager's Office	1	100	0	1	100
Food Service Receiving	1	80	0		80

**ATTACHMENT B  
SPACE ALLOCATION SUMMARY**

**PROPRIETARY & CONFIDENTIAL**

Janitorial & Chemical / Soap Storage	1	65	0		65
Kitchen Staff Toilet	1	60	0		60
Kitchen Staff Lockers	1	75	0		75
Can Wash / Dry			0		0
Mop Closet			0		0
Covered Loading Dock			0		0
<b>Cafetorium / Food Service</b>			<b>6</b>	<b>10,335</b>	
<b>Physical Education</b>					
Gymnasium (K-1)	1	4,080	0		4,080
Gymnasium (6-8)	1	7,110	0		7,110
Bleacher Seating	1	1,000	0		1,000
Interior Physical Education Storage	1	420	0		420
Physical Education Staff Office	2	160	0	4	320
Staff Lockers, Toilet and Shower	2	105	0		210
Student Locker Rooms and Showers	2	700	0		1,400
Student Restrooms	2	230	0		460
Health Classroom	1	1,040	0		1,040
K-5 Gym Storage	1	150	0		150
Laundry	1	70	0		70
<b>Physical Education Total</b>			<b>4</b>	<b>16,260</b>	
<b>Support Spaces</b>					
Custodial Off/Lockers / Storage	1	350	0	4	350
Janitor's Closet	5	30	0		150
Event Toilets	2	380	0		760
Student Toilets	4	200	0		800
Student Toilets	6	150	0		900
Staff only Toilets	6	60	0		360
Elevator	1	70	0		70
Elevator Equipment Room	1	65	0		65
Main Electrical	1	495	0		495
Electrical Distribution Rooms	4	varies	0		455
Data/Telecom Rooms	4	90	0		360
Main Mechanical	1	1,350	0		1,350
Mechanical Mezzanine / Storage	1	2,320	0		2,320
<b>Support Total</b>			<b>4</b>	<b>8,435</b>	
<b>Subtotal All Programmed Spaces</b>			<b>105</b>	<b>127,985</b>	
<b>Corridors, Structure, Support</b>				<b>42,045</b>	
<b>Grand Total</b>				<b>170,030</b>	
<b>Square Feet Per Student</b>				<b>159</b>	
<b>TOTAL ACTUAL GROSS AREA (SF)</b>				<b>171,170</b>	
<b>Differential (Actual to Programmed)</b>					



**Norfolk Public Schools – SBBCC PPEA Program  
Interim Agreement Schedule of Values & Durations:**

Updated on:

May 4, 2014

<u>Scope Description</u>	<u>Campostella Value</u>	<u>Broad Creek Value</u>	<u>Larchmont Value</u>	<u>Ocean View Value</u>	<u>Camp Allen Value</u>	<u>Totals</u>
Abatement	\$ 75,000	N/A	N/A	N/A	N/A	\$ 75,000
Demolition	\$ 384,550	N/A	N/A	N/A	N/A	\$ 384,550
Preconstruction	\$ 150,000	\$ 135,000	\$ 125,000	\$ 125,000	\$ 135,000	\$ 670,000
4 Months GCs	\$ 508,581	\$ 139,156	\$ 139,156	\$ 139,156	\$ 139,156	\$1,065,205
Soil Borings	\$ 6,875	\$ 15,439	\$ 17,463	\$ 15,439	\$ 20,939	\$ 76,155
Surveys	N/A	\$ 14,850	\$ 19,250	\$ 19,800	\$ 5,500	\$ 59,400
Easement & Subdivision	\$ 8,250	\$ 10,450	\$ 8,250	\$ 8,250	\$ 8,250	\$ 43,450
Phase 1 Environmental	N/A	\$ 2,475	\$ 2,475	\$ 2,475	\$ 2,475	\$ 9,900
HazMat & Demolition Package	\$ 10,000	N/A	\$ 37,472	\$ 37,472	\$ 17,219	\$ 102,163
Wetlands Delineation	N/A	\$ 13,200	\$ 13,200	N/A	N/A	\$ 26,400
35% A/E Design	\$ 509,468	\$ 330,026	\$ 311,534	\$ 312,535	\$ 396,333	\$1,859,896
P&P Bond @ 2.0%	\$ 28,916	\$ 16,513	\$ 15,599	\$ 15,325	\$ 16,971	\$ 93,324
OHP @ 4.8%	\$ 70,787	\$ 40,423	\$ 38,186	\$ 37,517	\$ 41,545	\$ 228,458
<b>Total Value Per School</b>	<b>\$ 1,545,522</b>	<b>\$ 882,564</b>	<b>\$ 833,733</b>	<b>\$ 819,117</b>	<b>\$ 907,056</b>	<b>\$4,616,621</b>

**Total Cost Value For All Schools = \$ 4,616,621    Owner Reserve = \$ 383,379    Total = \$ 5,000,000**

Scope Durations

Abatement (1,4)	30 Days	N/A	N/A	N/A	N/A
Demolition (1,4)	70 Days	N/A	N/A	N/A	N/A
Community Meetings (2,4)	45 Days	45 Days	45 Days	45 Days	45 Days
35% A/E Design (3,4)	<u>60 Days</u>	<u>60 Days</u>	<u>60 Days</u>	<u>60 Days</u>	<u>60 Days</u>
<b>Overall Duration (4)</b>	<b>130 Days</b>	<b>120 Days</b>	<b>121 Days</b>	<b>120 Days</b>	<b>120 Days</b>

- Notes:**
- (1) – After all permits are received
  - (2) – Duration represents preparation and advertising for (2) community meetings for each school. Timing of the community meetings varies per school. A 3<sup>rd</sup> meeting may be necessary at any of the schools and the schedule shall need to be adjusted accordingly.
  - (3) – After approval of the Conceptual Design which varies per school. Prior to 35% design submission each project must be presented to the Norfolk Design Review Committee for approval.
  - (4) – Durations are as shown on Attachment D

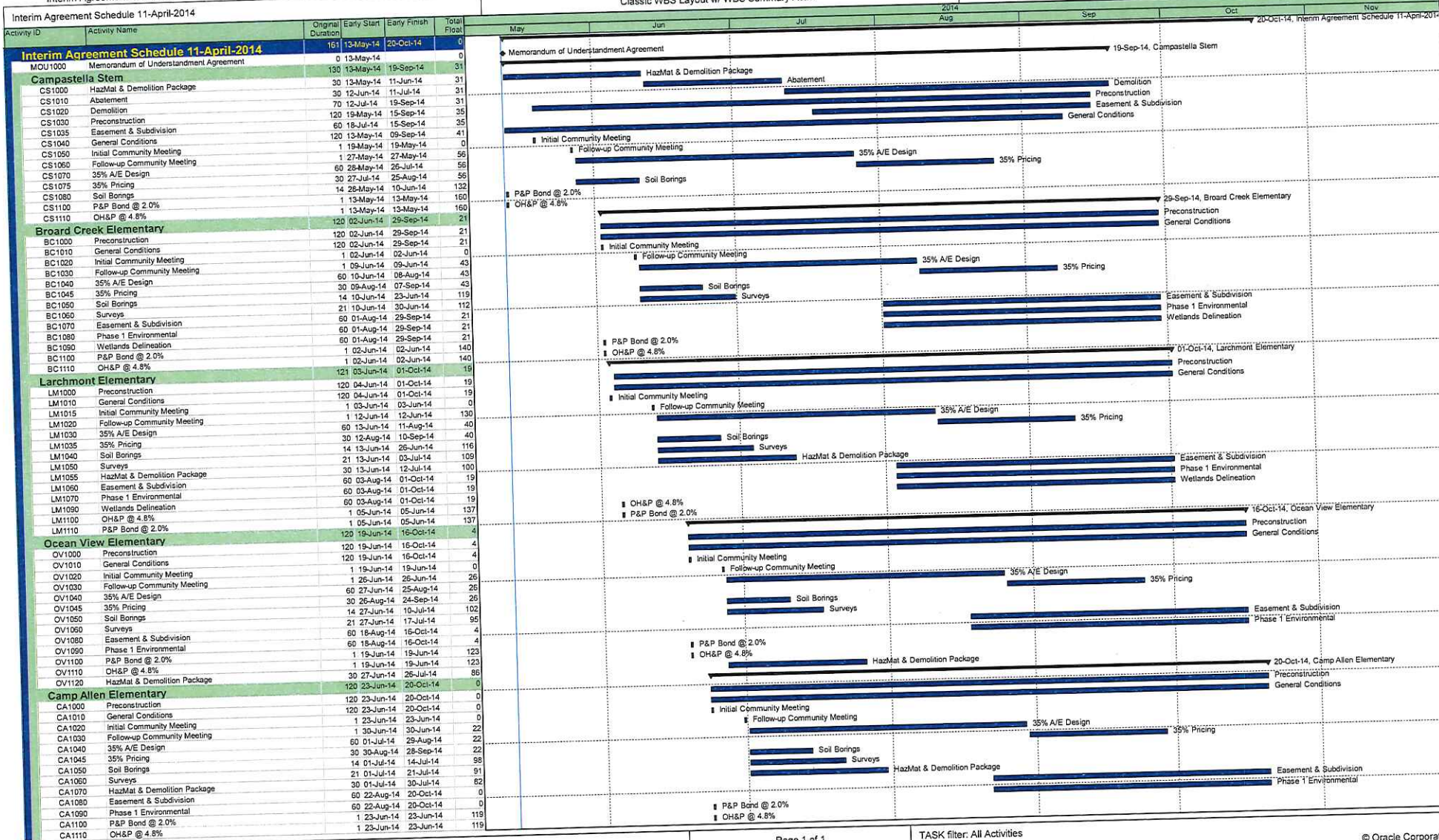
**Total Duration All Schools = 161 Days Including Campostella Abatement & Demolition, Community Meetings and 35% A/E Design on all five schools.**

CONFIDENTIAL &amp; PROPRIETARY

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Attachment D  
Interim Agreement Schedule

Classic WBS Layout w/ WBS Summary Activi



Actual Work Critical Remaining Work Summary  
Remaining Work Milestone

Page 1 of 1

TASK filter: All Activities

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Prepared By SBCC



**STANDARD GENERAL CONDITIONS OF THE  
AGREEMENT BETWEEN  
OWNER AND DESIGN/BUILDER**

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY .....	4
1.01 Defined Terms.....	4
1.02 Terminology .....	7
ARTICLE 2 – PRELIMINARY MATTERS .....	8
2.01 Delivery of Bonds .....	8
2.02 Commencement of Contract Times; Notice to Proceed .....	8
2.03 Starting the Work .....	8
2.04 Before Starting the Work.....	8
2.05 Initial Conference.....	8
2.06 Initial Acceptance of Schedules .....	8
ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE .....	9
3.01 Intent .....	9
3.02 Reference Standards.....	9
3.03 Resolving Discrepancies .....	10
3.04 Amending and Supplementing Contract Documents .....	10
3.05 Ownership and Use of Documents.....	10
3.06 Electronic Data.....	10
ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS .....	10
4.01 Availability of Lands .....	11
4.02 Differing Site Conditions .....	11
4.03 Reference Points .....	11
4.04 Hazardous Environmental Condition at Site .....	11
ARTICLE 5 – BONDS AND INSURANCE .....	12
5.01 Performance, Payment and Other Bonds .....	12
5.02 Certificates of Insurance .....	13
5.03 Design/Builder's Liability Insurance.....	15
5.04 Waiver of Subrogation.....	15
5.05 Acceptance of Bonds and Insurance; Option to Replace.....	15
ARTICLE 6 – DESIGN/BUILDER'S RESPONSIBILITIES .....	16
6.01 Design Professional Services .....	16
6.02 Supervision and Superintendence of Construction.....	17
6.03 Labor, Working Hours.....	17
6.04 Services, Materials, and Equipment .....	17
6.05 Not Used .....	17
6.06 Concerning Subcontractors, Suppliers and Others.....	17
6.07 Patent Fees and Royalties.....	18
6.08 Permits .....	18
6.09 Laws or Regulations.....	18
6.10 Taxes .....	18
6.11 Use of Site and Other Areas .....	19
6.12 Record Documents.....	19
6.13 Safety and Protection .....	20
6.14 Safety Representative.....	20
6.15 Hazard Communication Programs .....	20
6.16 Emergencies .....	20
6.17 Submittals.....	20
6.18 Continuing the Work .....	20
6.19 Post-Construction Phase.....	21
6.20 Design/Builder's General Warranty and Guarantee.....	21
6.21 Indemnification .....	21



ARTICLE 7 – OTHER CONSTRUCTION	23
7.01 Related Work at Site.....	23
7.02 Coordination.....	23
ARTICLE 8 – OWNER'S RESPONSIBILITIES	24
8.01 General.....	24
8.02 Limitations on Owner's Responsibilities.....	24
8.03 Undisclosed Hazardous Environmental Condition .....	24
8.04 Resident Project Representation.....	24
ARTICLE 9 – CHANGES IN THE WORK; CLAIMS	25
9.01 Authorized Changes in the Work.....	25
9.02 Unauthorized Changes in the Work.....	25
9.03 Claims .....	25
9.04 Execution of Change Orders .....	25
9.05 Notice to Sureties .....	25
ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK	26
10.01 Cost of the Work .....	26
10.02 Cash Allowances .....	28
10.03 Unit Prices.....	28
ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES	28
11.01 Change of Contract Price .....	28
11.02 Change of Contract Times.....	29
ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE DESIGN PROFESSIONAL SERVICES AND/OR CONSTRUCTION	30
12.01 Notice of Defects.....	30
12.02 Access to Construction .....	30
12.03 Tests and Inspections.....	30
12.04 Uncovering Construction .....	30
12.05 Owner May Stop Construction.....	31
12.06 Correction or Removal of Defective Design Professional Services and/or Construction .....	31
12.07 Correction Period .....	31
12.08 Acceptance of Defective Design Professional Services and/or Construction.....	32
12.09 Owner May Correct Defective Design Professional Services and/or Construction .....	32
ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION	33
13.01 Schedule of Values .....	33
13.02 Application for Progress Payment.....	33
13.03 Progress Payments .....	33
13.04 Design/Builder's Warranty of Title.....	34
13.05 Substantial Completion .....	34
13.06 Partial Utilization .....	34
13.07 Final Inspection.....	35
13.08 Final Payment .....	35
13.09 Final Completion Delayed .....	36
ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION	36
14.01 Owner May Suspend Work .....	36
14.02 Owner May Terminate for Cause .....	36
14.03 Owner May Terminate for Convenience .....	37
ARTICLE 15 – MISCELLANEOUS	37
15.01 Giving Notice .....	37
15.02 Computation of Times.....	37
15.03 Cumulative Remedies .....	37
15.04 Survival of Obligations .....	38

## **ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**

### **1.01 Defined Terms**

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Acceptance* - The formal written acceptance of the Work by Owner.
2. *Addenda* - Written or graphic instruments issued prior to the opening of Proposals that clarify, correct or change the Request for Proposals or the Contract Documents.
3. *Agreement* - The Comprehensive Agreement between Owner and Design/Builder covering the Work and all Contract Documents.
4. *Allowance* - An amount established in the Contract Documents for inclusion in the Contract Price to cover the cost of prescribed items not specified in detail.
5. *Application for Payment* - The form which is to be used by Design/Builder in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
6. *Architect of Record* - Professional legally responsible for the professional care of all design documents and Drawings.
7. *Bonds* - Performance and payment bonds and other instruments of security.
8. *Change Notice* - A notice issued to the Design/Builder specifying a proposed change to the Contract Documents.
9. *Change Order* - A written order, which is signed by Design/Builder and Owner, which authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
10. *Claim* - A demand or assertion by Owner or Design/Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a claim.
11. *Conceptual Documents* - The drawings and specifications and/or other graphic or written materials, criteria and information concerning Owner's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, including those items enumerated in the Request for Proposals which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for Owner.
12. *Construction* - The result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.
13. *Construction Sub-agreement* - A written agreement between Design/Builder and a construction Subcontractor for provision of Construction.
14. *Contract Documents* - Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.
15. *Contract Price* - The moneys payable by Owner to Design/Builder for completion of the Work in accordance with the Contract Documents.



16. *Contract Times* – The numbers of days or the dates stated in the Agreement to (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment in accordance with paragraph 13.08.
17. *Design Professional Services* – Services related to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals during Bidding/Negotiating, Construction, or Operational phases.
18. *Drawings* – Those portions of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of drawings, diagrams, illustrations, schedules and other data that show the scope, extent, and character of the Work.
19. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Extra Work* – Work determined by Owner as not being covered by the Contract Documents.
21. *Field Order* – A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
22. *Final Acceptance* – “Final Acceptance” of the Work occurs when the Project is fully completed in full, absolute, and strict compliance with the Contracts Documents including completion of all punch list items, and Owner gives Design/Builder written acceptance thereof.
23. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, Hazardous Waste, PCB's, Petroleum Products or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.
24. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
25. *Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
26. *Liens* – Charges, security interests or encumbrances upon real property or personal property.
27. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
28. *Notice of Award* – The written notice by Owner to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, Owner will sign and deliver the Agreement.
29. *Notice to Proceed* – A written notice given by Owner to Design/Builder fixing the date on which the Contract Times will commence to run and on which Design/Builder shall start to perform the Work.
30. *Design/Builder* - The individual or entity with whom Owner has entered into the Agreement as defined in Va. Code § 56-575.1 and shall include design construction, improving, equipping and installation.
31. *Owner* – The “Owner” is the City of Norfolk, the entity with whom Design/Builder has entered into the Agreement and for whom the Work is to be performed, and is referred to throughout the Contract Documents as if singular in number and neuter in gender. The term “Owner” also means the authorized representative of Owner.
32. *Partial Utilization* – Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

33. *PCBs* – Polychlorinated biphenyls.
34. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
35. *Project* – The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
36. *Proposal* – The documents submitted by Design/Builder in response to the Request for Proposals setting forth the design concepts, proposed prices, and other conditions for the Work to be performed.
37. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
38. *Request for Proposals* – The document prepared by or for Owner specifying and describing Owner's objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.
39. *Resident Project Representative* – The authorized representative of Owner who may be assigned to the Site or any part thereof.
40. *Schedule of Values* – A schedule prepared by Design/Builder and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work, aggregating the total original Contract Price.
41. *Site* – Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner that are designated for use of Design/Builder.
42. *Specifications* – The part of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
43. *Subcontractor* – An individual or entity other than a Supplier having a direct contract with Design/Builder or with any other Subcontractor for the performance of a part of the Work.
44. *Sub-agreement* – A written agreement between Design/Builder and a design professional for provision of Design Professional Services.
45. *Submittal* – A written or graphic document prepared by or for Design/Builder which is required by the Contract Documents to be submitted to Owner by Design/Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, Schedules of Values, manufacturer's literature, catalog cuts, etc. Submittals other than Drawings and Specifications are not Contract Documents.
46. *Substantial Completion* – The time at which the Work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part) can be fully utilized for the purposes for which it is intended as determined by Owner in its reasonable discretion. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
47. *Supplementary Conditions* – The part of the Contract Documents that amends or supplements these General Conditions.



48. *Supplier* – A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with Design/Builder or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Design/Builder or any Subcontractor.

49. *Unit Price Work* – Work to be paid for on the basis of unit prices.

50. *Work* – The entire construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents.

51. *Work Directive* - Written order prepared by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price or Contract Time, or both. The Owner may by Work Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Contract Price and Contract Time being adjusted accordingly. A Work Directive will be used in the absence of total agreement on the terms of a Change Order.

## 1.02 Terminology

### A. Intent of Certain Terms or Adjectives:

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

(a) The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not fully, completely and strictly conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner's final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner, or failure to complete any portion of the Work in a good and workmanlike fashion or such that it is not fit for its intended purpose.

(b) The word "defective" when modifying the word "Design Professional Services" refers to any departure from the standard of care as defined in paragraph 6.01A.

2. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

3. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

4. The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

5. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design/Builder, "provide" is implied.

6. Unless stated otherwise in the Contract Documents, words or phrases, which have a well-known technical or construction industry or trade meaning, are used in the Contract Documents in accordance with that meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### 2.01 Delivery of Bonds

A. When Design/Builder delivers the executed Agreement to Owner, Design/Builder shall also deliver to Owner such Bonds as Design/Builder may be required to furnish in accordance with paragraph 5.01.A.

DESIGN / BUILD RFP for the CITY of NORFOLK

2.02 Commencement of Contract Time; Notice to Proceed

A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time after the Effective Date of the Agreement.

2.03 Starting the Work

A. Design/Builder shall start to perform the Work on the date when the Contract Time commences to run.

No Work shall be done at the Site prior to the date on which the Contract Time commences to run.

2.04 Before Starting the Work

A. *Preliminary Schedules:* Within twenty-five (25) days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design/Builder shall submit the following to Owner for its timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. A preliminary schedule of Submittals that will list each required Submittal and the times for submitting, reviewing and processing each Submittal;
3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and
4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

B. *Evidence of Insurance:* Before any Work at the Site is started, Design/Builder shall each deliver to Owner, certificates of insurance as required by paragraph 5.03 which Design/Builder is required to purchase and maintain in accordance with Article 5.

2.05 Initial Conference

A. Within five (5) days after the Contract Time starts to run, Design/Builder will arrange a conference attended by Owner and Design/Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in paragraph 2.04.A, procedures for handling Submittals, processing Applications for Payment, maintaining required records and other matters.

2.06 Initial Acceptance of Schedules

A. At least ten (10) days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design/Builder will arrange a conference attended by Design/Builder, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with paragraph 2.04. Contractor shall have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to the Design/Builder until the acceptable schedules are submitted to Owner.

1. The progress schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Owner responsibility for the progress schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Design/Builder from Design/Builder's full responsibility therefor.
2. Design/Builder's schedule of Submittals will be acceptable to Owner if it provides a workable arrangement for reviewing and processing the required Submittals.



3. Design/Builder's Schedule of Values will be acceptable to Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the work.

**ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

3.01 Intent

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed full, absolute, complete and strict compliance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for at no additional cost to Owner.

3.02 Reference Standards

- A. Standards, Specifications, Codes, Laws or Regulations.
  1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the last day for receipt of Proposals except as may be otherwise specifically stated in the Contract Documents.
  2. No provision of any such standard, specification, manual, code, or instruction of a Supplier shall be effective to change the duties and responsibilities of Owner, Design/Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Resolving Discrepancies

- A. In the event of a discrepancy between the Conceptual Documents on the one hand and the Proposal or Drawings or Specifications on the other hand, the Proposal or Drawings or Specifications will control except when Owner has approved a Submittal pursuant to paragraph 6.17.B.
- B. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
  2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended only in writing, signed by all parties, to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
  1. Owner's approval of required Submittals (pursuant to paragraph 6.17.B);
  2. A Change Order;

3. A Field Order.
4. A Work Directive

3.05 Ownership and Use of Documents

A. Upon payment in-full to Design/Builder for all design professional services under 6.01 of the General Conditions, all documents including Drawings and Specifications prepared or furnished by Design/Builder pursuant to this Agreement shall become and remain the property of Owner whether the Project or is constructed or not. If Owner uses the said documents (or any part thereof) in connection with the Project where Design/Builder does not furnish Construction services or the Architect of Record does not provide Construction-phase Design Professions Services in respect thereof or any other project without written verification, adaptation, and consent of Design/Builder, such use shall be at Owner's sole risk and Design/Builder shall have no liability therefor.

3.06 Electronic Data

A. Copies of data furnished by Owner to Design/Builder or Design/Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. The transferring party will correct any errors detected within the 60-day acceptance period.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

**ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

4.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall furnish available existing surveys describing the Site's physical characteristics, property boundaries, existing building locations, legal limitations and known documented utility locations for the Project and a legal description of the Site.

B. Design/Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Differing Site Conditions

A. Design/Builder shall promptly give a written notice to Owner of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.

B. Owner will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Design/Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.



C. No request by Design/Builder for an equitable adjustment under paragraph 4.02 shall be allowed unless Design/Builder has given the written notice required; provided that Owner may extend the time prescribed in 9.03.A for giving written notice.

D. The provisions of this paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

#### 4.03 Reference Points

A. Design/Builder shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments if established by Owner and shall make no changes or relocations without the prior written approval of Owner. Design/Builder shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.04 Hazardous Environmental Condition at Site

A. Design/Builder shall be responsible for any Hazardous Environmental Condition created by any materials brought to the Site by Design/Builder, Subcontractors, Suppliers or anyone else for whom Design/Builder is responsible. Any cost or expense associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances by Design/Builder or those for whom Design/Builder is responsible, including, but not limited to, the cost of any clean up activities, removals, remediation, responses, damages, fines, administrative or civil penalties or charges imposed on Owner, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the release of any hazardous substances, or any noncompliance with or failure to meet any federal, State, or local standards, requirements, laws, statutes, regulations or the law of nuisance by Design/Builder ( or its Subcontractors, Suppliers, agents, officers, employees, or any other persons, corporations, or legal entities employed, utilized or retained by Design/Builder) in the performance of the Agreement or related activities, shall be the sole responsibility of and shall be paid by Design/Builder. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, its agents, volunteers, servants, employees, and officials from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all other litigation costs) arising out of or resulting from such Hazardous Environmental Condition created by Design/Builder or anyone for whom Design/Builder is responsible. Nothing in this paragraph 4.04.A shall obligate Design/Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence. Notwithstanding the foregoing, Design/Builder shall not be responsible for fees it proves to be unreasonable pursuant to the dispute-resolution provisions of the Agreement.

B. If Design/Builder encounters a pre-existing Hazardous Environmental Condition, Design/Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Construction in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify Owner (and thereafter confirm such notice in writing). Owner shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

C. Design/Builder shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to Design/Builder written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Construction stoppage, or if the parties cannot agree upon an adjustment in the Contract Price or Contract Times necessary to remediate the Hazardous Environmental Condition or any other special conditions under which Construction is agreed to be resumed by Design/Builder, either party may make a Claim therefor as provided in Article 9.

D. If after receipt of such special written notice Design/Builder does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then



Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Article 9. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordant with Article 7.

#### **ARTICLE 5 – BONDS AND INSURANCE**

##### **5.01 Performance, Payment and Other Bonds**

A. Together with the executed Agreement, Design/Builder shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Design/Builder's obligations to furnish, provide and pay for Work and related materials under the Contract Documents. These Bonds shall remain in effect as long as necessary to guarantee Contractor's obligations arising from the Agreement, except as provided otherwise by Laws or Regulations or by the Contract Documents. Design/Builder shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by one or more surety companies selected by Design/Builder which are licensed and legally authorized to conduct the business of insurance including surety, within the Commonwealth of Virginia. All Bonds signed by an agent must be accompanied by a certified copy of the power of attorney for the surety's attorney-in-fact.

C. If the surety on any Bond furnished by Design/Builder is declared bankrupt or becomes insolvent or its right to do business is terminated in the Commonwealth of Virginia or it ceases to meet the requirements of this Article, the Design/Builder shall within twenty days thereafter substitute another Bond and surety, both of which shall comply with the requirements of this Article.

##### **5.02 Certificates of Insurance**

A. Prior to commencing any Work, Design/Builder shall deliver to Owner, certificates of insurance (and other evidence of insurance requested by Owner) which Design/Builder is required to purchase and maintain. Evidence of replacement coverage shall be provided to the Owner 20 days prior to expiration of any such policies, so that there shall be no interruption in Work due to lack of proof of insurance coverage required by the Contract Documents. Owner shall not be liable for any delays (or costs or damages resulting there from) resulting from Design/Builder's failure to obtain the insurance required of Design/Builder under paragraph 5.03. Vendors, suppliers, material dealers and others who merely transport, pick up, deliver or carry materials, parts, or equipment or any other items or persons to or from the Project Site and those who furnish material worked to a special design but perform no operations at the Project Site shall not be required to furnish a certificate(s) or other evidence of insurance to Owner.

##### **5.03 Design/Builder's Liability Insurance**

A. Design/Builder shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and with such as will provide protection from claims set forth below which may arise out of or result from Design/Builder's performance of the Work (including, but not limited to Design Professional Services) and Design/Builder's other obligations under the Contract Documents, whether it is to be performed by Design/Builder, any Subcontractor or Supplier or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design/Builder's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design/Builder's employees;



4. Claims for damages insured by reasonably available personal injury liability coverage that are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Design/Builder, or (ii) by any other person for any other reason;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting there from; and

6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The insurance required by this Article shall be written for not less than any limits of liability in the Contract Documents, or required any Laws or Regulations, whichever is greater. Design/Builder shall furnish insurance with the following minimum limits:

1. Worker's Compensation:

a. Coverage

1. Employer's Liability: \$1,000,000 Each Occurrence
2. Disease Policy Limit: \$1,000,000
3. Disease –Each Employee: \$1,000,000

b. Requirements

1. Voluntary Compensation Endorsement
2. Waiver of Subrogation in favor of Owner and General Contractor
3. United States Long Shore & Harbor Worker's Endorsement

2. Commercial General Liability

a. Coverage

1. \$1,000,000 Each Occurrence
2. \$2,000,000 General Aggregate
3. \$2,000,000 Completed Operations/Products Aggregate
4. \$1,000,000 Personal Injury
5. \$5,000 Medical Payments

b. Requirements

1. Contractual Liability
2. X, C, and U Perils Coverage
3. Completed Operations Extended to the five(5) years or the Statute of Repose, whichever is less  
Broad Form Property Damage
5. Fellow Employee Coverage

6. No Residential Exclusions shall apply
  7. Additional Insured – Owner and Contractor to be included as Additional Insureds per form CG 20 10 11 85 or equivalent, and this coverage shall include: Premises/Operations coverage, Products/Completed Operations coverage, and apply on a Primary and Noncontributory basis.
  8. No restrictions with regards to the scope of work being performed on the jobsite.
3. Errors and Omissions
    - a. Coverage: \$1,000,000 each occurrence, \$2,000,000 Aggregate. At Owner's expense, these limits may be increased to \$5,000,000 per occurrence, \$10,000,000 aggregate limit.
    - b. Requirement: Design Professional Liability
  4. Comprehensive Automobile Liability:
    - a. Coverage
      1. Bodily Injury: \$1,000,000 Each Person, \$1,000,000 Each Accident;
      2. Property Damage: \$1,000,000 Each Occurrence
    - b. Requirements
      1. Covers owned, non-owned, or hired vehicles
      2. Additional Insured – Owner and contractor to be included as Additional Insureds
  5. Excess Liability:
    - a. Coverage
      1. Contractor - \$5,000,000 per occurrence, \$5,000,000 aggregate
      2. Sub-Contractor - \$1,000,000 per occurrence, \$1,000,000 aggregate
    - b. Requirements - Additional Insured – Owner and Contractor to be included as Additional Insured utilizing form CG 20 10 11 85 or equivalent, and this coverage shall apply excess of all underlying coverage.
  6. Builder Risk: Design/Builder shall provide builder's risk coverage on the full insurable value of the Work.
  - C. Excluding Workers' Compensation and Design Professional Liability policies, the policies of insurance required by paragraph 5.03 shall:
    1. Include as additional insureds the Owner, and its agents, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
    2. Contain a provision or endorsement that the coverage afforded will not be canceled, reduced, or renewal refused unless the insurer has endeavored to provide at least thirty (30) days' prior written notice to the Owner.
    3. Remain in effect at least until Final Acceptance of the entire Project and at all times thereafter when Contractor may be correcting, removing or replacing defective Construction in accordance with paragraphs 12.06 and 12.07; and



4. With respect to completed operations insurance, and any other insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Design/Builder shall furnish Owner evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.04 Waiver of Subrogation

The insurance policies obtained by Design/Builder and Subcontractors pursuant to paragraph 5.03 shall be endorsed to include a waiver of subrogation in favor of indemnified parties or entities; provided, however, that all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

5.05 Acceptance of Bonds and Insurance; Option to Replace

If Owner has a reasonable objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by Design/Builder in accordance with Article 5 on the basis of their not complying with the Contract Documents, Owner shall so notify Design/Builder in writing after receipt of the certificates (or other evidence requested) required by paragraph 2.04.B. Design/Builder shall provide to Owner such additional information in respect of insurance provided as Owner may reasonably request. If Design/Builder does not purchase or maintain all of the Bonds and insurance required by the Contract Documents, Design/Builder shall notify Owner in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, Owner may elect to obtain equivalent Bonds or insurance to protect Design/Builder's interests at Design/Builders' sole cost and expense, and a Change Order shall be issued to adjust the Contract Price accordingly.

**ARTICLE 6 – DESIGN/BUILDER'S RESPONSIBILITIES**

6.01 Design Professional Services

A. *Standard of Care.* The standard of care for Design Professional Services performed or furnished under this Agreement will be the reasonable care, compliance and skill ordinarily used by members of the engineering or the particular design profession practicing under similar conditions at the same time and locality, including without limitation, in preparing plans and specifications and in making certain that the Construction is properly completed pursuant to the Drawings, Plans and Specifications.

B. *Preliminary Design Phase.* After the Contract Times commence to run, Design/Builder shall:

1. Consult with Owner to understand Owner's requirements for the Project and review available data;
2. Advise Owner as to the necessity of Owner's providing or obtaining from others additional reports, data, or services and assist Owner in obtaining such reports, data, or services;
3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design/Builder with whom consultation is to be undertaken in connection with the Project;
4. Obtain such additional geo-technical and related information that it deems necessary for performance of the Work;
5. On the basis of the Conceptual Documents and Design/Builder's Proposal, prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project;

## DESIGN / BUILD RFP for the CITY of NORFOLK

6. Identify any material variations in the preliminary design documents from the Contract Documents in accordance with 6.17.B.

C. *Final Design Phase.* After written acceptance by Owner of the preliminary design phase documents Design/Builder shall:

1. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design/Builder and Specifications (which will be prepared, where appropriate, in general conformance with the division format of the Construction Specifications Institute);
2. Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner in consultations with appropriate authorities;
3. Furnish the above documents, Drawings, and Specifications to and review them with Owner within the times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and
4. Identify any material deviations from other Contract Documents in accordance with paragraph 6.17.B.

### 6.02 Supervision and Superintendence of Construction

A. Design/Builder shall supervise, inspect and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design/Builder shall be solely responsible for the means, methods, techniques, sequences and procedures of Construction. Design/Builder shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep Owner informed as to the quality and progress of the Construction.

B. At all times during the progress of Construction, the Design/Builder shall assign a competent resident superintendent thereto, who shall not be replaced without written notice to Owner except under extraordinary circumstances. The superintendent will be Design/Builder's representative at the Site and shall have authority to act on behalf of Design/Builder except where otherwise provided in the Contract Documents. All communications given to or received from the superintendent shall be binding on Design/Builder.

### 6.03 Labor, Working Hours

A. Design/Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design/Builder shall at all times maintain good discipline and order at the Site.

### 6.04 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Design/Builder shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the Work.

B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If reasonably required by Owner, Design/Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

### 6.05 Not Used



6.06 Concerning Subcontractors, Suppliers, and Others

A. Design/Builder shall select its Subcontractors, Suppliers and other individuals or entities furnishing labor, materials, equipment or other services to the Project; provide, however, Design/Builder shall not employ any Subcontractor, Supplier, or other individual or entity against whom Owner makes a reasonable objection in writing prior to the execution of such subcontracts.

B. Design/Builder shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers and other individuals or entities performing or furnishing any of the Work just as Design/Builder is responsible for Design/Builder's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier, or other individual or entity, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws or Regulations.

C. Design/Builder shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Design/Builder.

D. Design/Builder shall require all Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with the Owner through Design/Builder.

E. All Work performed for Design/Builder by a Subcontractor or Supplier will be pursuant to an appropriate Design Sub-agreement or Construction Sub-agreement between Design/Builder and the Subcontractor or Supplier that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner.

Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.05, the agreement between the Design/Builder and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Design/Builder, Owner's Consultant, and all other additional insureds (and their officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Design/Builder will obtain the same.

6.07 Patent Fees and Royalties

A. Design/Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents for use in the performance of the Construction and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Conceptual Documents.

B. Design/Builder shall indemnify and hold harmless Owner, its agents, servants, employees, and officials from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all litigation costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not identified in the Conceptual Documents. Notwithstanding the foregoing, Design/Builder shall not be responsible for fees it proves to be unreasonable pursuant to the dispute resolution provisions of the Agreement.

6.08 Permits

A. Unless otherwise provided in the Contract Documents, Design/Builder shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. Design/Builder shall pay all governmental charges and inspection fees necessary for the performance of the Work, which are applicable on the last day for receipt of Proposals; provided, however that Owner shall waive all building-related code permit fees. Design/Builder shall pay all charges of utility owners for connections to the Work.

6.09 Laws or Regulations

A. Design/Builder shall give all notices required by and comply with all Laws or Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design/Builder's compliance with any Laws or Regulations.

B. If Design/Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design/Builder shall bear all costs arising therefrom.

C. Changes in Laws or Regulations not known on the date of receipt of Proposals having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Times.

6.10 Taxes

A. Design/Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design/Builder in accordance with the Laws or Regulations of the place of the Project that are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas.

1. Design/Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site, and shall not unreasonably encumber the Site with construction equipment or other materials or equipment. Design/Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of Work, Design/Builder shall promptly settle with such other party by negotiation or otherwise resolve the claim at law.

3. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, its agents, servants, employees, and officials from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and litigation costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design/Builder's performance of the Construction.

B. *Removal of Debris.* During the performance of the Construction, Design/Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning.* Prior to Substantial Completion, Design/Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design/Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.



D. *Loading Structures.* Design/Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design/Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

#### 6.12 Record Documents

A. Design/Builder shall maintain in a safe place at the Site one record copy of all Drawings, Shop Drawings, Specifications, Addenda, Change Orders, and Field Orders in good order and annotated to show all changes made during performance of the Work. These record documents together with all approved Submittals will be available to Owner for reference. Upon completion of the Work, these record documents and Submittals, including a reproducible set of record drawings, a hard copy set of the record drawings, and drawings in an electronic format (.dwg) will be delivered to Owner.

#### 6.13 Safety and Protection

A. Design/Builder shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design/Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. All persons on the Site or who may be affected by the Work;
2. All Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation, or replacement in the course of construction.

B. Design/Builder shall comply with applicable Laws or Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design/Builder shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Design/Builder, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design/Builder.

D. Design/Builder's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and Owner has issued a notice to Design/Builder in accordance with paragraph 13.08.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 Safety Representative

A. Design/Builder shall designate a qualified and experienced safety representative responsible for the Sites, who shall be dedicated to the Project, whose duties and responsibilities shall include the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 6.15 Hazard Communication Programs

A. Design/Builder shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design/Builder is obligated to act to prevent threatened damage, injury or loss. Design/Builder shall give Owner prompt written notice if Design/Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design/Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Submittals

A. Design/Builder will provide a copy of all approved Submittals to Owner.

B. Owner's review of Submittals shall not relieve Design/Builder from responsibility for any variation from the requirements of the Contract Documents unless Design/Builder has in a separate written communication at the time of submission called Owner's attention to each such variation and Owner has given written approval.

6.18 Continuing the Work

A. Design/Builder shall diligently commence, prosecute and complete and shall continue the Work and adhere to the master schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Design/Builder and Owner may otherwise agree in writing.

6.19 Post-Construction Phase

A. Design/Builder shall:

1. Provide start-up, testing, refining and adjusting of any equipment or system.
2. Provide training of Owner's staff to operate and maintain the Work.
3. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Work.

6.20 Design/Builder's General Warranty

A. Design/Builder warrants to Owner that all Construction will be in full, absolute, complete and strict compliance with the Contract Documents, will not be defective, and will be new and of good quality and that Design Professional Services will meet or exceed the applicable standard of care. Design/Builder's warranty hereunder excludes defects or damage caused by:

1. Abuse, modification or improper maintenance or operation by persons other than Design/Builder, subcontractors, sub-consultant, or suppliers or any other individual or entity for whom Design/Builder is responsible; or
2. Normal wear and tear under normal usage.

B. Design/Builder's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Design/Builder's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by Owner;
2. The making of any progress or final payment;



3. The issuance of a certificate of Substantial Completion;
4. Use or occupancy of the Work or any part thereof by Owner;
5. Any acceptance by Owner or any failure to do so;
6. Any review and approval of a Submittal;
7. Any inspection, test or approval by others; or
8. Any correction of defective Professional Design Services and/or Construction by Owner.

6.21 Indemnification

A. It is understood and agreed that Design/Builder hereby assumes the entire responsibility and liability for any and all damages to persons or property to the extent caused by or resulting from or arising out of any negligent act or omission on the part of Design/Builder, its subcontractors, sub-consultants, agents or employees under or in connection with this Agreement or the negligent performance or failure to perform the Work required by this Agreement, including, without limitation, all Design Professional Services and Construction. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, its agents, volunteers servants employees and officials from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all litigation costs) suffered by any indemnified party or entity arising out of or resulting from bodily injury, sickness, disease, death or property damage or destruction caused by (a) negligent performance of the Design Professional Services and/or the negligent performance of Construction by Design/Builder or those for whom Design/Builder is legally liable, including its subcontractors, sub-consultants, any supplier or any individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work.; and (b) the violation of any Laws or Regulations applicable to this Agreement; provided, however, Design/Builder shall not be liable for any claims, costs, losses or damages arising out of or resulting from bodily injury, sickness, disease, death or property damage or destruction to the extent caused by the negligence or willful misconduct of Owner or any third party for whose acts or omissions Design/Builder is not responsible and shall not be liable for fees it proves to be unreasonable pursuant to the dispute-resolution provisions of the Agreement. Upon written demand by Owner, Design/Builder shall assume and defend through attorneys selected by the Design/Builder at Design/Builder's sole expense any and all such suits or defense of claims made against Owner, its agents, volunteers, servants employees or officials.

B. In any and all claims against Owner, its agents, volunteers, servants, employees and officials by any employee (or the survivor or personal representative of such employee) of Design/Builder, any subcontractor, sub-consultant, any supplier, any design professional or other individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.21.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Design/Builder or any such subcontractor, sub-consultant, supplier, or other individual or entity under workers' compensation laws or regulations.

**ARTICLE 7 – OTHER CONSTRUCTION**

7.01 Related Work at Site

A. Owner may perform other Work related to the Project at the Site by Owner's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. Written notice thereof will be given to Design/Builder prior to starting any such other work; and
2. Design/Builder may make a Claim therefor as provided in Article 9 if Design/Builder believes that such performance will involve additional expense to Design/Builder or requires additional time and the parties are unable to agree as to the amount or extent thereof.

B. Design/Builder shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents (but subject to Claims as contemplated above), Design/Builder shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design/Builder shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Design/Builder under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Design/Builder in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Design/Builder's Work depends upon work performed or services provided by others under this Article 7, Design/Builder shall inspect such other work and appropriate instruments of service and promptly report to Owner in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of Design/Builder's Work and/or gives rise to any Claim under Article 9. Design/Builder's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Design/Builder's Work except for latent or non-apparent defects and deficiencies in such other work. Design/Builder shall not be responsible for any delay caused by any defect or deficiency in work performed or services provided by third parties whose acts or omissions Design/Builder is not responsible.

#### 7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. The individual or entity who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
2. The specific matters to be covered by such authority and responsibility will be itemized; and
3. The extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility in respect of such coordination.

### **ARTICLE 8 – OWNER'S RESPONSIBILITIES**

#### 8.01 General

A. The responsibilities of Owner include the following:

1. Owner shall designate in writing a person to act as Owner's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, make decisions with respect to performance of the Work, and shall provide such other services as may be agreed upon. Owner may assign various inspectors to inspect the progress and quality of the Work;
2. Owner shall make payments to Design/Builder promptly when they are due as provided in paragraph 13.03 and 13.08;
3. Furnish the Site as set forth in paragraph 4.01.A;



4. Furnish to Design/Builder, as required for performance of Design/Builder's Services, if available and in the possession of Owner, the following, all of which Design/Builder may use and rely upon in performing services under this Agreement:

- a. Environmental assessment and impact statements;
- b. Property, boundary, easement, right-of-way, topographic, and utility surveys;
- c. Property descriptions;
- d. Zoning, deed, and other land use restrictions;
- e. Permits, licenses, and approvals of government authorities that the Owner is specifically required to obtain by the Contract Documents; and
- f. All subsurface data at or contiguous to the Site which Owner may have obtained.

5. Provide information known to or in the possession of Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.

6. Process submittals, drawings, and time sensitive questions in a timely fashion so as not to delay the Work.

#### 8.02 Limitations on Owner's Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design/Builder's means, methods, techniques, sequences, or procedures of design and/or construction or the safety precautions and programs incident thereto, or for any failure of Design/Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design/Builder's failure to perform the Work in accordance with the Contract Documents.

#### 8.03 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Materials uncovered or revealed at the Site is set forth in paragraph 4.04. Design/Builder shall be entitled to submit a Claim under Article 9 in the event any such items are uncovered or revealed at the Site.

#### 8.04 Resident Project Representation

A. Owner shall designate a Resident Project Representative. The Resident Project Representative has the authority to approve changes in the scope of the project and shall be available during working hours and as often as may be required to render decisions and furnish information in a timely manner. Owner may at any time in its discretion change the Resident Project Representative with prior written notice to Design/Builder. Design/Builder shall be entitled to rely on all changes approved by Owner's Resident Project Representative.

### **ARTICLE 9 – CHANGES IN THE WORK; CLAIMS**

#### 9.01 Authorized Changes in the Work

A. Without invalidating the Agreement and without notice to any surety, Owner may, at any time or from time to time, in writing, order additions, deletions, or revisions in the Work within the general scope of the Contract by a Change Order. Upon receipt of any such documents, Design/Builder shall promptly proceed with the Work involved that will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.02 Unauthorized Changes in the Work

A. Design/Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Construction as provided in paragraph 12.04.

9.03 Claims

A. *Notice.* If Owner and Design/Builder are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of any order of Owner pursuant to paragraph 9.01.A or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a Claim may be made therefor. Written notice of intent to make such a Claim shall be submitted to the other party promptly and in no event more than fifteen (15) days after the Design/Builder discovers or should have discovered the occurrence or event giving rise to the Claim.

B. *Documentation.* The claiming party shall submit substantiating documentation within thirty (30) days after delivery of the notice required by paragraph 9.03.A.

C. *Decision.* The other party shall render a decision on the Claim no more than 30 days after the receipt of the substantiating documentation required by paragraph 9.03.B. This decision will be final and binding unless the claiming party gives notice of intention to exercise its rights under Article 15 within 30 days of receipt of the decision and exercises such rights within 30 days of giving the notice of intent.

D. *Time Limit Extension.* The time limits of paragraphs 9.03.B and 9.03.C may be extended by mutual written agreement.

9.04 Execution of Change Orders

A. Owner and Design/Builder shall execute appropriate Change Orders covering:

1. Changes in the Work which are (i) ordered by Owner pursuant to paragraph 9.01, (ii) required because of acceptance of defective Construction under paragraph 12.08 or Owner's correction of defective Work under paragraph 12.09 or (iii) agreed to by the parties.

9.05 Notice to Sureties

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design/Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

**ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK**

10.01 Cost of the Work

A. *Costs Included.* The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design/Builder in the proper performance of the Work. When the value of Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Design/Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 10.01.B:

1. Payroll costs for employees in the direct employ of Design/Builder in the performance of the Work under schedules of job classifications agreed upon by Owner and Design/Builder.



- a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site along with the project manager, project manager assistants, and support staff located at the Design/Builders home office while specifically working on this project. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by Owner.
  - b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this paragraph 10.01.A.1, Design/Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Agreement, for all services performed or furnished by such employees engaged on the Project.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design/Builder unless Owner deposits funds with Design/Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design/Builder shall make provisions so that they may be obtained.
3. Payments made by Design/Builder to Subcontractors (excluding payments for Design Professional Services pursuant to paragraph 10.01.A.4) for Work performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design/Builder's Cost of the Work and fee.
4. Payments made by Design/Builder for Design Professional Services provided or furnished under a Design Sub-agreement.
5. Costs of special consultants (including but not limited to testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
6. Supplemental costs including the following items:
  - a. The proportion of necessary transportation, travel and subsistence expenses of Design/Builder's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Design/Builder.
  - c. Rentals of all construction or engineering equipment and machinery and the parts thereof whether rented from Design/Builder or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Design/Builder is liable, imposed by Laws or Regulations.
  - e. Deposits lost for causes other than negligence of Design/Builder, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses, damages, and related expenses caused by damage to the Work not compensated by insurance or otherwise, sustained by Design/Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design/Builder's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as faxes, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. Cost of premiums for all Bonds and insurance Design/Builder is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded.* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Design/Builder's officers, executives, principals (of partnerships and sole proprietorships), are to be considered administrative costs covered by the Design/Builder's fee.

2. Expenses of Design/Builder's principal and branch offices other than Design/Builder's office at the Site.

3. Any part of Design/Builder's capital expenses, including interest on Design/Builder's capital employed for the Work and charges against Design/Builder for delinquent payments.

4. Costs due to the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.01.A.

C. *Design/Builder's Fee.* When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design/Builder's fee shall be determined as set forth in paragraph 11.01.C.

D. *Documentation.* Whenever the cost of any Work is to be determined pursuant to paragraph 10.01.A and 10.01.B, Design/Builder will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

#### 10.02 Cash Allowances

A. The Contract Price includes all allowances so named in the Contract Documents. Design/Builder shall cause the Work so covered to be performed for such sums as may be acceptable to Owner. Design/Builder agrees that:

1. The allowances include the cost to Design/Builder (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Except as set forth in the Contract Documents, Design/Builder's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Design/Builder on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.



10.03 Unit Prices

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design/Builder will be made by Owner and testing company if applicable.

B. Each unit price will be deemed to include an amount considered by Design/Builder to be adequate to cover Design/Builder's overhead and profit for each separately identified item.

**ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIME**

11.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the Claim to the other party promptly in accordance with paragraph 9.03.A.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 10.03); or
2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum
3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 10.01) plus an Design/Builder's Fee for overhead and profit (determined as provided in paragraph 11.01.C).

C. Design/Builder's Fee: The Design/Builder's fee for overhead and profit on Change Orders shall be determined as follows:

1. A fee based on the following percentages of the various portions of the Cost of the Work:
  - a. For costs incurred under paragraphs 10.01.A.1.a and 10.01.A.2, the Design/Builder's fee shall be 15 percent;
  - b. For costs incurred under paragraph 10.01.A.3 10.01.A.4, 10.01.A.5 and 10.01.A.6, the Design/Builder's fee shall be five percent;
  - c. Where one or more tiers of subcontracts are included in the basis of Cost of the Work plus a fee, paragraphs 11.01.C.1.a. and 11.01.C.1.b. set forth that the Subcontractor who actually performs or furnishes Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 10.01.A.1 and 10.01.A.2 and that any higher tier Subcontractor will be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
  - d. The amount of credit to be allowed by Design/Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design/Builder's fee by an amount equal to five percent of such net decrease; and

- e. When both additions and credits are involved in any one change, the adjustment in Design/Builder's fee shall be computed on the basis of the net change.

#### 11.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice pursuant to paragraph 9.03.A.

B. *Delays Beyond Design/Builder's Control.* Where Design/Builder is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Design/Builder, the Design/Builder shall be entitled to a non-compensatory time extension in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 11.02.A. Delays beyond the control of Design/Builder shall include, but not be limited to, acts or neglect by governmental agencies, fires, floods, terrorist attacks, epidemics, unusually severe weather conditions, or acts of God. Weather shall be considered "unusually severe" only if a weather condition, or any combination of weather conditions, causes Design/Builder to lose a number of Work days during a calendar month where the total number of lost days for that calendar month exceeds the number of budgeted lost work days listed below for that calendar month. Weather-related delay claims shall be subject to the notice requirements of paragraph 9.03.A. Upon timely written notice and documentation of such delay, Design/Builder shall be entitled to a compensatory time extension only in accordance with paragraph C following, and the time for performance as herein specified shall be adjusted by adding the number of excess work days lost because of the weather condition(s) to the duration of the activities actually affected by the weather condition(s). At its sole and unfettered discretion, Owner may elect to require Design/Builder to recover the time lost as a result of such delay, under which circumstances; Owner shall pay Design/Builder the reasonable, actual additional cost of recovering lost time, but no additional fee. The remedy set forth in this sub-section shall be Design/Builder's sole and exclusive remedy for an excusable delay as defined in this sub-section. A work day is defined as Monday through Friday, unless prior written notice is provided by Design/Builder to Owner that it intends to perform Work on any given Saturday and/ or Sunday. Design/Builder shall not be entitled to weather-related time extensions or, if applicable, costs for recovering lost time, for any Saturday or Sunday for which prior written notice was not provided. As stated herein, Design/Builder shall anticipate the potential loss of the number of work days listed below for each calendar month due to weather, and shall schedule the Work accordingly:

January =8; February=8; March=8; April=6; May=4; June=4; July=4; August=3; September=3; October=3; November=4; December=6

C. If Owner or other contractor or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Design/Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Design/Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design/Builder's ability to complete the Work within the Contract Times.

D. Owner shall not be liable to Design/Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all litigation costs) sustained by Design/Builder on or in connection with any other project or anticipated project.

E. Design/Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Design/Builder. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design/Builder. All delays within the control of Design/Builder shall be subject to the Liquidated Damages provision contained in Paragraph 3.03 of the Design/Build Agreement.



**ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE DESIGN PROFESSIONAL SERVICES AND/OR CONSTRUCTION**

12.01 Notice of Defects

A. Owner shall give Design/Builder prompt written notice of all defective Design Professional Services and/or Construction of which Owner has actual knowledge. All defective Design Professional Services and/or Construction may be rejected, corrected or accepted as provided in this Article 12.

12.02 Access to Construction

A. Owner, Owner's inspectors, other representatives, consultants and personnel of Owner, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design/Builder shall provide them proper and safe conditions for such access and advise them of Design/Builder's Site safety procedures and programs so that they may comply therewith as applicable.

12.03 Tests and Inspections

A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, Design/Builder shall assume full responsibility for arranging and obtaining such Special Inspections, Building Code inspections, tests or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval. Design/Builder shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work or of materials, mix designs, or equipment submitted for approval prior to Design/Builder's purchase thereof for incorporation in the Work.

B. Design/Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, or approvals.

C. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design/Builder without written concurrence of Owner, it must, if requested by Owner, be uncovered for observation at Design/Builder's expense unless Design/Builder has given Owner timely notice of Design/Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

12.04 Uncovering Construction

A. If any Construction is covered contrary to the written request of Owner, it must, if requested by Owner, be uncovered for Owner's observation and recovered at Design/Builder's expense.

B. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, Design/Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment. If it is found that such Construction is defective, Design/Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all litigation costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If, however, such Construction is not found to be defective, Design/Builder shall be allowed an increase in the Contract Price (pertaining to all costs and the Design/Builder's fee for overhead and profit caused by or resulting from such uncovering, exposure, observation, inspection or testing, including but not limited to all fees and charges of engineers, architects and all costs of repair and replacement of the work of others) or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Design/Builder may make a Claim therefor as provided



in Article 9. Notwithstanding the foregoing, neither party shall be responsible for fees found to be unreasonable pursuant to the dispute-resolution provisions of the Agreement.

12.05 Owner May Stop Construction

A. If the Design Professional Services and/or Construction are defective, or Design/Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design/Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design/Builder or any other party, nor shall the exercise of such right entitle the Design/Builder to any change in the Contract Price or Contract Times.

12.06 Correction or Removal of Defective Design Professional Services and/or Construction

A. Owner will have authority to disapprove or reject defective Design Professional Services and/or Construction and will have authority to require special inspection or testing of the Construction whether or not the Construction is fabricated, installed or completed. If required by Owner, Design/Builder shall promptly, as directed, either correct all defective Design Professional Services and/or Construction, whether or not fabricated, installed or completed, or, if the Construction has been rejected by Owner, remove it from the Site and replace it with non-defective Construction. Design/Builder shall bear all direct costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all litigation costs) arising out of or relating to such correction or removal. Notwithstanding the foregoing, Design/Builder shall not be responsible for fees it proves to be unreasonable pursuant to the dispute-resolution provisions of the Agreement.

12.07 Correction Period

A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Design Professional Services and/or Construction is found to be defective, Design/Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (i) correct such defective Design Professional Services and/or Construction, or, if it has been rejected by Owner, remove the Construction from the Site and replace it with Construction that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design/Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Design Professional Services and/or Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all litigation costs, and all costs of repair or replacement of work of others) will be paid by Design/Builder. Nothing herein shall be construed to change, limit or waive any rights or remedies to which Owner may be entitled, including, without limitation, recovery for breach of contract, professional malpractice, or otherwise, within the applicable Statute of Limitations. Notwithstanding the foregoing, Design/Builder shall not be responsible for fees it proves to be unreasonable pursuant to the dispute-resolution provisions of the Agreement.

B. In special circumstances involving a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.

C. Where defective Design Professional Services and/or Construction (and damage to other Construction resulting therefrom) where a significant item or items of equipment have been corrected, removed or replaced under this paragraph 12.07, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.



12.08 Acceptance of Defective Design Professional Services and/or Construction

A. If, instead of requiring correction or removal and replacement of defective Design Professional Services and/or Construction, Owner prefers to accept it, Owner may do so. Design/Builder shall pay all costs, losses, and damages (including but not limited to all reasonable fees and charges of engineers, architects, attorneys and other professionals and all litigation costs) attributable to Owner's evaluation of and determination to accept such defective Design Professional Services and/or Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Design Professional Services and/or Construction so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If the acceptance occurs after final payment, an appropriate amount will be paid by Design/Builder to Owner.

12.09 Owner May Correct Defective Design Professional Services and/or Construction

A. If Design/Builder fails within a reasonable time after written notice from Owner to correct defective Design Professional Services and/or Construction or to remove and replace rejected Construction as required by Owner in accordance with paragraphs 12.06.A or 12.07.A, or if Design/Builder fails to perform the Construction in accordance with the Contract Documents, or if Design/Builder fails to comply with any other provision of the Contract Documents, Owner may, after fourteen (14) days written notice to Design/Builder, correct and remedy any such deficiency.

B. In connection with the corrective and remedial action described herein, Owner may exclude Design/Builder from all or part of the Site and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere. Design/Builder shall allow Owner, Owner's consultants, Owner's representatives, agents, employees, and other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all litigation costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this paragraph 12.09 will be charged against Design/Builder and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9, but shall not be subject to the notice requirement contained in paragraph 9.03. Notwithstanding the foregoing, Design/Builder shall not be responsible for fees it proves to be unreasonable pursuant to the dispute-resolution provisions of the Agreement.

D. Design/Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this paragraph 12.09.

**ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION**

13.01 Schedule of Values

A. The Schedule of Values established as provided in paragraph 2.04.A.3 will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.02 Application for Progress Payment

A. On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design/Builder shall submit to Owner for review an Application for Payment filled out and signed by Design/Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other

documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, with "Owner as Beneficiary as Interest May Appear" stated on the insurance certificate, all of which will be satisfactory to Owner.

B. Beginning with the second Application for Payment, each Application shall include an affidavit of Design/Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design/Builder's legitimate obligations associated with prior Applications for Payment.

C. The amount of retainage with respect to progress payments will be set at 5%; provided, however: (i) retainage shall not be applied to payments for Design Professional Services and; (ii) at the discretion of the Owner, retainage may be reduced for any portion of the Work that is substantially complete.

### 13.03 Progress Payments

A. *Procedure.* Progress payments shall be made by the Owner to the Design/Builder according to the following procedure:

1. Owner will, within five (5) work days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design/Builder indicating in writing its reasons for refusing to accept the Application. Not more than thirty days after receipt such Application the amount will become due and when due will be paid by Owner to Design/Builder.

2. If Owner should fail to pay Design/Builder at the time the payment of any amount becomes due, then Design/Builder may, at any time thereafter, upon serving written notice that it will stop the Work within seven days after receipt of the notice by Owner, and after such seven day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner except as set forth in paragraphs B and C following, Design/Builder shall be entitled to an extension of the Contract time on account of work stoppage resulting from nonpayment by Owner.

3. Payments due but unpaid shall bear interest at the rate specified in the Agreement.

4. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

B. *Reduction in or Refusal to Make Payment.* Owner may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:

1. The Construction is defective, or completed Construction has been damaged by Design/Builder or its subcontractors requiring correction or replacement; or

2. The Contract Price has been reduced by Change Order; or

3. Owner has been required to correct defective Construction or complete Work in accordance with paragraph 12.09.A; or

4. Owner has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.A.; or

5. Claims have been made against Owner on account of Design/Builder's performance or furnishing of the Work; or

6. Liens have been filed in connection with the Work, except where Design/Builder has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or



7. Pursuant to the terms of the Contract Documents, there are other items entitling Owner to a set off against the amount for which application is made.

C. If Owner refuses to make payment of the full amount requested by Design/Builder, Owner must give Design/Builder immediate written notice stating the reasons for such action and promptly pay Design/Builder any amount remaining after deduction of the amount withheld. Owner shall promptly pay Design/Builder the amount withheld or any adjustment thereto agreed to when Design/Builder corrects to Owner's satisfaction the reason for such action.

#### 13.04 Design/Builder's Warranty of Title

A. Design/Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 13.05 Substantial Completion

A. When Design/Builder considers the Work on any individual school ready for its intended use Design/Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design/Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design/Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers the Work on any individual school substantially complete, Owner will prepare and deliver to Design/Builder a certificate of Substantial Completion that shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion Owner will deliver to Design/Builder a written determination as to division of responsibilities pending final payment between Owner and Design/Builder with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees. Owner's failure to issue a certificate of Substantial Completion when appropriate shall entitle Design/Builder to make a Claim under Article 9.

B. Owner will have the right to exclude Design/Builder from the Site after the date of Substantial Completion, but Owner will allow Design/Builder reasonable access to complete or correct items on the list of items to be completed.

#### 13.06 Partial Utilization

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction at Owner's expense (including utilities) which (i) has specifically been identified in the Contract Documents, or (ii) Owner and Design/Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design/Builder's performance of the remainder of the Construction, subject to the following:

1. Owner at any time may request Design/Builder in writing to permit Owner to use or occupy any such part of the Construction which Owner believes to be ready for its intended use and substantially complete. If Design/Builder agrees that such part of the Work is substantially complete, Design/Builder will certify to Owner that such part of the Construction is substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Construction. Design/Builder at any time may notify Owner in writing that Design/Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, Owner and Design/Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of paragraph 13.05 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

13.07 Final Inspection

A. Upon written notice from Design/Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design/Builder and will notify Design/Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design/Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.08 Final Payment

A. Application for Payment.

1. After Design/Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, record documents (as provided in paragraph 6.12) and other documents, Design/Builder may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (unless previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Article 5; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens arising out of or filed in connection with the Work.

3. In lieu of such releases or waivers of Liens specified in paragraph 13.08.A.2 and as approved by Owner, Design/Builder may furnish receipts or releases in full and an affidavit of Design/Builder that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Design/Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Final Payment and Acceptance.* If Owner is satisfied that the Work has been completed and Design/Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within thirty (30) days after receipt of the final Application for Payment, give written notice to Design/Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design/Builder, indicating in writing the reasons for refusing to process final payment, in which case Design/Builder shall make the necessary corrections and resubmit the Application.

C. *Payment Becomes Due.* Thirty (30) days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the amount will become due and will be paid by Owner to Design/Builder.

13.09 Final Completion Delayed

A. If, through no fault of Design/Builder, final completion of the Work is significantly delayed, Owner shall, upon receipt of Design/Builder's final Application for Payment, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01.A, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design/Builder to Owner with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.



**ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION**

**14.01 Owner May Suspend Work**

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to Design/Builder that will fix the date on which Work will be resumed. Design/Builder shall resume the Work on the date so fixed. Design/Builder shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Design/Builder makes a Claim therefor as provided in Article 9.

**14.02 Owner May Terminate for Cause**

A. The occurrence of any one or more of the following events constitutes a default under the Agreement and justifies termination for cause:

1. Design/Builder's failure to timely commence, prosecute, and/or complete the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the master schedule established under paragraph 2.06.A as adjusted from time to time), and failure to cure same upon notice.
2. Design/Builder's failure to fully comply with any Laws or Regulations of any public body having jurisdiction, and failure to cure same upon notice.
3. Design/Builder's violation of any material provision of the Contract Documents, and failure to cure same upon notice.

B. If one or more of the events identified in paragraph 14.02.A occur, Owner may, after giving Design/Builder (and the surety, if any) 14 days written notice following Design/Builder's failure to cure in a timely manner pursuant to paragraph 14.02C, terminate the services of Design/Builder, take possession of any completed Drawings and Specifications prepared by or for Design/Builder (subject to the indemnification provisions of paragraph 3.05.A), exclude Design/Builder from the Site, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design/Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or other litigation costs) such excess will be paid to Design/Builder. If such costs, losses and damages exceed such unpaid balance, Design/Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed provided that Owner acts reasonably and in good faith to mitigate damages. Notwithstanding the foregoing, Design/Builder shall not be responsible for fees it proves to be unreasonable pursuant to the dispute-resolution provisions of the Agreement.

C. Notwithstanding paragraph 14.02.B, Design/Builder's services will not be terminated if Design/Builder begins within fourteen (14) days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of said notice or within a specified time depending upon the failure.

D. Where Design/Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design/Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design/Builder by Owner will not release Design/Builder from liability.

**14.03 Owner May Terminate for Convenience**

A. Upon 14 days written notice to Design/Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design/Builder shall withdraw its personnel and equipment, and shall cease performance of any further work under this Agreement, and shall turn over

to Owner any Work completed or in process for which payment has been made. In the event Owner terminates for convenience, Design/Builder shall be paid (without duplication of any items) for:

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
3. Reasonable expenses directly attributable to termination.

B. Except as provided in this Article, Design/Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination, or for any portion of the Work not performed.

#### **ARTICLE 15 – MISCELLANEOUS**

##### **15.01 Giving Notice**

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified mail, postage prepaid, to the last business address known to the giver of the notice. If either party can provide proof of actual notice through other means, such notice shall be deemed acceptable under this Agreement.

##### **15.02 Computation of Times**

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

##### **15.03 Cumulative Remedies**

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by:

1. Laws or Regulations; or
2. Any special warranty or guarantee; or
3. Other provisions of the Contract Documents.

##### **15.04 Survival of Obligations**

A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

**END of Standard General Conditions of the Agreement Between Owner and Contractor**